

Exhibit E

<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT FOR THE 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al,) 5) 6 Plaintiffs,) 7) 8 vs.) Case No. 17-04057-CV-C-NKL 9) 10 STATE OF MISSOURI, et al,) 11) 12 Defendants.) 13) 14) 15) 16) 17) 18) 19) 20) 21) 22) 23) 24) 25)</p> <p>VIDEOTAPED DEPOSITION OF MATTHEW CROWELL TAKEN ON BEHALF OF THE PLAINTIFFS DECEMBER 20, 2017</p>	<p style="text-align: right;">Page 3</p> <p>1 UNITED STATES DISTRICT COURT FOR THE 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al,) 5) 6 Plaintiffs,) 7) 8 vs.) Case No. 17-04057-CV-C-NKL 9) 10 STATE OF MISSOURI, et al,) 11) 12 Defendants.) 13) 14) 15) 16) 17) 18) 19) 20) 21) 22) 23) 24) 25)</p> <p>VIDEOTAPED DEPOSITION OF MATTHEW CROWELL, produced, sworn, and examined on December 20, 2017, between the hours of 1:30 o'clock in the afternoon and 6:00 o'clock in the afternoon of that day, at Alaris Litigation Services, 2422 East Madrid Street, Springfield, Missouri 65084, before Jenna Petree, in a certain cause now pending UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION, wherein SHONDEL CHURCH, et al are the Plaintiffs, and STATE OF MISSOURI, et al are the Defendants.</p>
<p style="text-align: right;">Page 2</p> <p>1 INDEX 2 WITNESS: Matthew Crowell 3 Direct Examination 6 4 Cross Examination 123 5 Cross Examination 152 6 Redirect Examination 153 7 8 EXHIBITS 9 Exhibit 54103 10 Exhibit 5585 11 Exhibit 5685 12 Exhibit 57157 13 Exhibit 58110 14 Exhibit 59110 15 Exhibit 60155 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES 2 For the Plaintiffs: 3 Matthew R. Shahabian 4 Anjali Prasad 5 ORRICK, HERRINGTON & SUTCLIFFE, LLP 6 51 West 52nd Street 7 New York, NY 10019 8 mshahabian@orrick.com 9 aprasad@orrick.com 10 For the Defendants: 11 Steven Alan Ramsey 12 STATE OF MISSOURI 13 Attorney General's Office 14 221 West High Street 15 Jefferson City, MO 65101 16 573-751-9167 17 Steven.Ramsey@ago.mo.gov 18 For the Public Defenders: 19 Jacqueline Shipma 20 MISSOURI STATE PUBLIC DEFENDER 21 General Counsel 22 Woodrail Centre 23 1000 West Nifong 24 Building 7, Suite 100 25 Columbia, MO 65203 573-526-5212 Jacqueline.Shipma@mspd.mo.gov</p> <p>The Court Reporter: Jenna Petree Alaris Litigation Services 2511 Broadway Bluffs Columbia, MO 65201 573-449-0561 The Videographer: Bethany Scutti - Alaris Litigation Services</p>

1 (Pages 1 to 4)

<p style="text-align: right;">Page 5</p> <p>1 THE VIDEOGRAPHER: We are on the record.</p> <p>2 Today's date is December 20, 2017 and the time is 1:36 p.m.</p> <p>3 This is the video recorded deposition of Matthew Crowell in</p> <p>4 the matter of Shondel Church, et al versus State of</p> <p>5 Missouri, et al, Case No. 17-04057-CV-C-NKL in the U.S.</p> <p>6 District Court for the Western District of Missouri,</p> <p>7 Central Division.</p> <p>8 This deposition is being held at Alaris</p> <p>9 Litigation Services, 2422 East Madrid street, Springfield,</p> <p>10 Missouri 65804. The reporter's name, Jenna Petree. My</p> <p>11 name is Bethany Scutti. I'm the legal videographer. We</p> <p>12 are with Alaris Litigation Services.</p> <p>13 Would the attorney present please introduce</p> <p>14 themselves.</p> <p>15 MR. SHAHABIAN: Matt Shahabian for the</p> <p>16 plaintiffs.</p> <p>17 MS. PRASAD: Anjali Prasad for the plaintiffs.</p> <p>18 MR. RAMSEY: Steven Alan Ramsey for the State</p> <p>19 of Missouri and Governor Greitens.</p> <p>20 MS. SHIPMA: Jacqueline Shipma for the MSDP</p> <p>21 defendants.</p> <p>22 THE VIDEOGRAPHER: Will the court reporter</p> <p>23 please swear in the witness.</p> <p>24 IT IS HEREBY STIPULATED AND AGREED, by and</p> <p>25 between counsel for the Plaintiffs and counsel for the</p>	<p style="text-align: right;">Page 7</p> <p>1 Wait for me to finish the question before you begin your</p> <p>2 answer. It's more difficult for the court reporter to</p> <p>3 transcribe if we are talking over each other. Your counsel</p> <p>4 or counsel for the State defendants may have objections to</p> <p>5 some of my questions. Unless your counsel instructs you</p> <p>6 not to answer my question, you should answer even if there</p> <p>7 is an objection lodged. If you don't understand one of my</p> <p>8 questions, just tell me and I will rephrase the question</p> <p>9 and hopefully make it clear. We can take breaks whenever</p> <p>10 you like. So if you need a break, restroom, or just to</p> <p>11 catch your breath; just let me know. The only rule is you</p> <p>12 can't take a break when there is a question pending. I</p> <p>13 just ask that you finish the answer to the question that's</p> <p>14 pending and then we can take a break. Sound good?</p> <p>15 A Sounds great.</p> <p>16 Q So what did you do prepare for this deposition</p> <p>17 today?</p> <p>18 A I met with Jackie Shipma, my general counsel,</p> <p>19 and we discussed kind of what to expect.</p> <p>20 Q Did you review any documents?</p> <p>21 A I don't believe we did. I don't recall</p> <p>22 reviewing any documents.</p> <p>23 Q Did you review any other data or materials in</p> <p>24 preparation for this deposition?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 6</p> <p>1 Defendants, that the deposition of MATTHEW CROWELL may be</p> <p>2 taken in shorthand by Jenna Petree, and afterwards</p> <p>3 transcribed into typewriting; and the signature of the</p> <p>4 witness is expressly reserved.</p> <p>5 * * * *</p> <p>6 MATTHEW CROWELL,</p> <p>7 of lawful age, produced, sworn, and examined on behalf of</p> <p>8 the Plaintiffs, deposes and says:</p> <p>9 THE VIDEOGRAPHER: You may proceed.</p> <p>10 QUESTIONS BY MR. SHAHABIAN:</p> <p>11 Q Good afternoon, Mr. Crowell.</p> <p>12 A Good afternoon.</p> <p>13 Q Thanks for taking the time to be here. My</p> <p>14 name is Matt Shahabian. I'm an attorney for the</p> <p>15 plaintiffs. Before we get started, have you ever been</p> <p>16 deposed before?</p> <p>17 A No.</p> <p>18 Q Okay. So I will start by laying out the</p> <p>19 ground rules basically how the deposition will work so we</p> <p>20 are all on the same page. So there is a court reporter</p> <p>21 here who is transcribing the deposition, as well as a video</p> <p>22 court reporter. Because we have a transcript, I would ask</p> <p>23 that you answer questions with verbal responses; yes, no,</p> <p>24 or whatever you want to elaborate. A head nod or shake of</p> <p>25 your head isn't going to get picked up by the transcript.</p>	<p style="text-align: right;">Page 8</p> <p>1 Q Did you talk to anybody besides Ms. Shipma in</p> <p>2 preparation for this deposition?</p> <p>3 A I told other people I would be here, but I</p> <p>4 didn't talk to anybody else about preparing for today's</p> <p>5 deposition.</p> <p>6 Q And how many times did you meet with</p> <p>7 Ms. Shipma in preparation?</p> <p>8 A Just once.</p> <p>9 Q What do you do for a living?</p> <p>10 A I'm the district defender for the Area 25</p> <p>11 office of the public defender. In that capacity, I</p> <p>12 function as the supervising attorney and I also represent</p> <p>13 clients charged with criminal offenses.</p> <p>14 Q What is Area 25?</p> <p>15 A Area 25 is a branch of Missouri State Public</p> <p>16 Defender Office. It encompasses six counties in the state</p> <p>17 of Missouri including Phelps, Pulaski, Maries, Texas,</p> <p>18 Crawford, and Dent counties.</p> <p>19 Q How long have you been the district defender</p> <p>20 for Area 25?</p> <p>21 A I believe I'm going on my third year.</p> <p>22 Q What did you do before you were the district</p> <p>23 defender?</p> <p>24 A I was the deputy district defender.</p> <p>25 Q Also in Area 25?</p>

2 (Pages 5 to 8)

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Case 2:17-cv-04057-NKL Document 160-6 Filed 02/21/18 Page 3 of 74

<p style="text-align: right;">Page 9</p> <p>1 A Yes.</p> <p>2 Q How long were you the deputy district</p> <p>3 defender?</p> <p>4 A Two years.</p> <p>5 Q Could you describe your employment experience</p> <p>6 aside from being defender and deputy district defender?</p> <p>7 A I was assistant public defender prior to that</p> <p>8 for approximately five years. Do you want me to go beyond</p> <p>9 that?</p> <p>10 Q Let's keep going.</p> <p>11 A Okay. Prior to that I was a law student. In</p> <p>12 law school and in college I worked at Sonic Drive-In both</p> <p>13 in Harrisonville, Missouri and in Kirksville, Missouri</p> <p>14 where I attended school. That position I was an assistant</p> <p>15 manager of the restaurant.</p> <p>16 Q When did you graduate law school?</p> <p>17 A 2008.</p> <p>18 Q Did you have any legal internships during law</p> <p>19 school?</p> <p>20 A I did. I worked as an intern for</p> <p>21 Harrisonville Missouri's public defender office. I don't</p> <p>22 remember the area. I also -- I guess I also did an</p> <p>23 internship with Christopher Bird that was paid, so.</p> <p>24 Q What is Christopher Bird?</p> <p>25 A He was a solo practitioner in the Kansas City</p>	<p style="text-align: right;">Page 11</p> <p>1 Q Roughly how much of your time is spent on</p> <p>2 administrative tasks?</p> <p>3 A It varies. Recently, maybe 10 percent because</p> <p>4 of ongoing caseload issues. Probably prior to the</p> <p>5 Hinkebein decision, I was probably closer to 30 to</p> <p>6 40 percent maybe.</p> <p>7 Q And what kind of tasks would you put into the</p> <p>8 administrative task bucket?</p> <p>9 A Hiring, firing, making sure that people are</p> <p>10 doing their time sheets, that they are coming to work. I</p> <p>11 would probably throw in that bucket the training and time</p> <p>12 spent with the younger attorneys, newer attorneys, and</p> <p>13 getting them up to speed.</p> <p>14 Q How much of your time would you say you spend</p> <p>15 on the supervisory portion of your docket, so-to-speak?</p> <p>16 A So out of that 10 percent?</p> <p>17 Q So would you put your supervisory</p> <p>18 responsibilities in the administrative component? Or would</p> <p>19 you -- I think one way to go back and this may be my fault</p> <p>20 for being unclear, but I had split it into three buckets;</p> <p>21 administrative, supervisory, and your caseload. Would you</p> <p>22 say it's more accurate to put supervisory in the</p> <p>23 administrative bucket?</p> <p>24 A Yeah, I guess I have trouble distinguishing</p> <p>25 between the two.</p>
<p style="text-align: right;">Page 10</p> <p>1 area. He did mainly civil law, civil litigation. He was</p> <p>2 briefly with the law firm of Hazelton and Laner when I went</p> <p>3 to work for him, but I had no affiliation with them.</p> <p>4 Q So moving back to your employment at MSPD;</p> <p>5 what is your responsibilities -- what are your</p> <p>6 responsibilities as the district defender?</p> <p>7 A My responsibilities as the district defender</p> <p>8 are to manage the attorneys in the office and the support</p> <p>9 staff to ensure that clients that we represent receive the</p> <p>10 best representation possible based upon the MSPD guidelines</p> <p>11 and also to represent clients.</p> <p>12 Q What are the MSPD guidelines?</p> <p>13 A They are the -- I guess they're not really --</p> <p>14 well, they are rules by which we represent our clients.</p> <p>15 They are somewhat aspirational in the sense that, you know,</p> <p>16 I think they anticipate adequate resources, but they are</p> <p>17 quite voluminous, so I don't know specifically what you're</p> <p>18 asking. I don't know --</p> <p>19 Q Just generally.</p> <p>20 A Generally speak, they are the guidelines that</p> <p>21 dictate how we are to represent our clients.</p> <p>22 Q And so is it fair to say that you have</p> <p>23 administrative tasks, supervisory tasks, and your own</p> <p>24 caseload as the district defender?</p> <p>25 A That's correct.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q That's fine.</p> <p>2 A Administrative in my mind is what</p> <p>3 administrative tasks do I have to do like my own time</p> <p>4 sheets, my own expense report and following-up on e-mails</p> <p>5 and that sort of thing. Supervisory is when I'm monitoring</p> <p>6 the attorneys and staff doing those things. And so that's</p> <p>7 how I distinguish between the two. I would spend probably</p> <p>8 --</p> <p>9 Q So let me ask it this way: What percentage of</p> <p>10 your time would you say is spent doing both administrative</p> <p>11 and supervisory tasks?</p> <p>12 A Currently probably 10 to 15 percent. But,</p> <p>13 again, if I include training in that and supervising new</p> <p>14 attorneys, it's much higher. It's probably 50 to 60, maybe</p> <p>15 even 70 percent of my time spent helping new attorneys.</p> <p>16 Q So you would say helping new attorneys</p> <p>17 including training, could be anywhere from 40 to 50 percent</p> <p>18 of your time?</p> <p>19 A Or much more than that depending on the day.</p> <p>20 Q How many attorneys are in your office?</p> <p>21 A Including me, 14.</p> <p>22 Q And how many non-attorney employees do you</p> <p>23 have?</p> <p>24 A Six-and-a-half.</p> <p>25 Q What are their responsibilities?</p>

3 (Pages 9 to 12)

<p style="text-align: right;">Page 13</p> <p>1 A The non-attorneys?</p> <p>2 Q Yes.</p> <p>3 A I have two investigators. Their job is to</p> <p>4 assist the attorneys in investigating the case and</p> <p>5 collecting evidence and interviewing witnesses, subpoena</p> <p>6 witnesses. I have two legal assistants. Their job is</p> <p>7 to -- similar to investigators. They do a lot of the same</p> <p>8 sort of things, but also they assist in filing motions,</p> <p>9 preparing motions; kind of the more administrative tasks</p> <p>10 that an attorney might be responsible for. They also are</p> <p>11 responsible for assisting in jail visits and in court. And</p> <p>12 at court they would do things like do intakes for potential</p> <p>13 new clients, meet with the defendants and their families.</p> <p>14 Then I have two-and-a-half clerical positions. Their jobs</p> <p>15 are primarily to answer the phone, maintaining the office</p> <p>16 supplies, ordering; that sort of thing.</p> <p>17 Q What would you say the average experience</p> <p>18 level of the attorneys in your office is?</p> <p>19 A Maybe a year. I have one attorney in my</p> <p>20 office with 15 years experience. I'm the next highest; I</p> <p>21 have nine years under me. The next highest is an attorney</p> <p>22 and I think he has six years and then it drops off from</p> <p>23 there.</p> <p>24 Q And by drops off from there, would you say</p> <p>25 more or less than two years?</p>	<p style="text-align: right;">Page 15</p> <p>1 Q Would you say you, as the district defender,</p> <p>2 you have a lot of discretion in the day-to-day management</p> <p>3 of your office?</p> <p>4 A No.</p> <p>5 Q Why not?</p> <p>6 A Well, I don't have any control over the</p> <p>7 resources. That really controls how you manage your</p> <p>8 office. So the resources that are given to me, I have to</p> <p>9 distribute between six counties. I can't really control,</p> <p>10 you know, much about what how those resources are spent</p> <p>11 because they are so limited.</p> <p>12 Q And so you're not responsible for setting the</p> <p>13 budget for your office?</p> <p>14 A My office has a budget. It is not set by me.</p> <p>15 It is set by our main office in Columbia. I do have some</p> <p>16 control over some items in that budget. So I could refuse</p> <p>17 to order certain types of pens. I could deny what we call</p> <p>18 a local E-request. So if somebody wanted to spend less</p> <p>19 than \$500.00 on something, I could say you're not going to</p> <p>20 do that. But realistically I don't have much control over</p> <p>21 it because those are things that we need and we have to do.</p> <p>22 Q How big is the current caseload in your area?</p> <p>23 A Right now I would say roughly our office is</p> <p>24 handling about a 1,000 cases.</p> <p>25 Q And on average how many cases does each</p>
<p style="text-align: right;">Page 14</p> <p>1 A I have one attorney that has I believe three</p> <p>2 years of experience and another attorney with four or five</p> <p>3 years experience, but I think a year of that was prior to</p> <p>4 being criminal defense. Then almost every other attorney</p> <p>5 after that is less than two. In fact every other attorney</p> <p>6 after that is less than two.</p> <p>7 Q How many attorneys in your office have one</p> <p>8 year of experience or less?</p> <p>9 A You put me on the spot.</p> <p>10 Q Roughly, I won't hold you to it.</p> <p>11 A I would say eight or nine attorneys.</p> <p>12 Q How do you assign cases that come into your</p> <p>13 office to those attorneys?</p> <p>14 A To the new attorneys?</p> <p>15 Q To any of the attorneys in the office.</p> <p>16 A The cases are primarily assigned by county.</p> <p>17 So the attorneys are assigned to a particular county and</p> <p>18 the cases that come into that county would go to those</p> <p>19 attorneys. That's traditionally what we have done. More</p> <p>20 recently, because of my concern over attorney's caseloads,</p> <p>21 I have been -- the cases have been coming in. When the</p> <p>22 judge orders us into the case, I have been entering those</p> <p>23 cases. And then through discussions with attorneys and</p> <p>24 reviewing their caseload and that sort of thing, I would</p> <p>25 then assign cases to the attorneys based on their workload.</p>	<p style="text-align: right;">Page 16</p> <p>1 attorney in your office carry?</p> <p>2 A Typically somewhere between 100 and 150.</p> <p>3 Right now it's a little bit lower, again, because we have</p> <p>4 been waitlisting and I have taken on more cases because of</p> <p>5 the appointments.</p> <p>6 Q How many cases are on your docket currently?</p> <p>7 A On my personal?</p> <p>8 Q Yes.</p> <p>9 A Last I checked it was 133.</p> <p>10 Q And that's a case docket you carry in addition</p> <p>11 to your administrative and supervisory responsibilities?</p> <p>12 A That's correct.</p> <p>13 Q Are there any local policies, formal or</p> <p>14 informal, that you have set as district defender that, you</p> <p>15 know, are not imposed by the central office?</p> <p>16 A I have decided to waitlist cases or clients;</p> <p>17 that was not imposed. I'm sure there are other minor</p> <p>18 policies, but that's a big one. I mean, that's just me</p> <p>19 deciding to -- not refuse clients, but delay us entering</p> <p>20 into their cases.</p> <p>21 Q I certainly want to talk about that, but I may</p> <p>22 just -- I'm not ignoring you. We'll push it off until a</p> <p>23 little later in the deposition. You said there are about</p> <p>24 1,000 cases in your office right now. Would you say that</p> <p>25 that is typical, above average, below average in your</p>

4 (Pages 13 to 16)

<p style="text-align: right;">Page 17</p> <p>1 experience as director -- district defender and deputy 2 district defender? 3 A I would say it's slightly below average. 4 Q What would the average be around? 5 A In a year's time we typically handle like I 6 think last fiscal year we handled 3,700 cases. I think by 7 this point last year, we were a couple hundred cases ahead 8 of where we are. It's lower because of the waitlist. So I 9 think right now we have -- and I know you said you wanted 10 to get into this later. 11 Q Please answer completely. 12 A -- to show you where we are at, the reason I 13 think we are about 200 behind last year is because the 14 numbers last year show we were about 200 ahead. But also 15 there are roughly 200 people on our waitlist. 16 Q So when you say a 1,000 cases -- and I may 17 have misunderstood -- when you say a 1,000 cases, you're 18 not counting cases on the waitlist? 19 A Right. If we were to open those cases today, 20 we would be roughly 1,200. 21 Q Okay. Could you describe generally after an 22 indigent defendant is arrested, at what point in the 23 criminal process is your office contacted to represent 24 them? 25 A It depends on the individual defendant. So if</p>	<p style="text-align: right;">Page 19</p> <p>1 consequences. A lot of times they will say things about 2 their innocence or guilt that probably they shouldn't be 3 saying in open court. If they had an attorney, the 4 attorney could at least advise them to remain silent. I 5 don't think the courts do a very good -- the courts try to 6 keep them quiet, but it's just not the same as having an 7 attorney there, so. 8 Q Could defendants waive constitutional rights 9 during any of these hearings? 10 A Yes, they do. They often, I think, waive 11 their right to an attorney. They waive their right to 12 remain silent. I just had one that came to mind. Often 13 times -- I don't know if it's necessarily a constitutional 14 right -- but they with inadvertently waive their right to 15 change of venue or change of judge because of the time 16 beginning, you know, when they go to arraignment, that 17 starts their window of opportunity to change judge or 18 change venue. If they don't have an attorney at that 19 stage, obviously they may not have one ten days down the 20 road, so they will waive that right as well. 21 Q And that may be an inadvertent waiver, but it 22 happens as a result of the criminal process continuing 23 without counsel? 24 A It's inadvertent. I think some judges 25 purposely avoid having counsel in cases to facilitate that.</p>
<p style="text-align: right;">Page 18</p> <p>1 they were arrested and they are sitting in jail, all the 2 jails in my area provide applications to them. All they 3 have to do is fill out the application and it gets faxed or 4 we pick it up. So the delay in receiving applications in 5 that sense, if they were to file it the minute they got 6 into the jail would probably be, we would receive it within 7 a day or two, typically. If they are not in custody, if 8 they are released on a summons, we probably wouldn't get an 9 application from them for quite some time. 10 Q Are there any stages in the criminal process 11 that occur in courts in your area prior to you entering -- 12 your office entering an appearance? 13 A There would be counsel status hearing, bond 14 appearance hearings. In some courts, arraignments. 15 Q So in some courts in your area, arraignments 16 can occur for indigent defendants who have not yet been 17 appointed counsel? 18 A Yes, happens all the time. 19 Q Are you aware of any negative consequences 20 that can happen to clients in that situation -- or not to 21 clients, to indigent defendants in that situation? 22 A Certainly. I think a lot of indigent clients 23 in that situation sometimes they pled guilty without the 24 advice of counsel and they don't understand the 25 consequences. In some courts that can have very serious</p>	<p style="text-align: right;">Page 20</p> <p>1 Q What makes you say that? 2 A In some of our counties, judges -- we would 3 change judge routinely off of a particular judge because of 4 the way they treat our clients, their dispositions, their 5 bonds; that sort of thing. So it was always in our 6 client's interest to change judge. Well, judges would get 7 annoyed with that, or at least in my belief they would get 8 annoyed. So they would stop appointing counsel or having 9 us be present at court dates so that way they could go 10 ahead and arraign the individual and then they would set a 11 court date beyond the ten-day window. So I can't say that, 12 yes, they were being vindictive or something, but it 13 certainly appeared based on their actions and what they 14 were doing, they were trying to circumvent our ability to 15 change judge or venue. 16 Q And in a case like that where the defendant is 17 arraigned without counsel, at what point after that would 18 your office come into the case? 19 A Well, again, if they are in jail, you know, 20 it's really kind of up to the client to take -- or the 21 defendant to take action to get us an application. At some 22 point, the courts become a little more active. After they 23 have been sitting for about a month, they will often bring 24 them up to the courtroom while we are there so we will give 25 them an application and have them fill it out. If they</p>

5 (Pages 17 to 20)

<p style="text-align: right;">Page 21</p> <p>1 aren't in custody, then usually it will be the courtroom 2 center where they will come to their next court date, we 3 will be present. The judge will ask them have they applied 4 for the public defender. Most of the time that will be a 5 negative and so they will say go see the public defender. 6 They are right over there and they will give you an 7 application. So that decision is made in court.</p> <p>8 Q When you are appointed to represent clients 9 prior to an arraignment taking place, what steps would 10 attorneys – would you or attorneys in your office take to 11 prepare for arraignments or other preliminary hearings?</p> <p>12 A Generally speaking the main thing you would do 13 is meet with the client. In almost all of our counties we 14 are not getting discovery prior to arraignment in circuit 15 court. So this would be an associate court when we 16 normally get in a case. So the main thing you would do is 17 meet with the client, beyond that not much else I think 18 happens.</p> <p>19 Q What sort of information would you try to ask 20 a client in order to be able to effectively advocate for 21 them?</p> <p>22 A Well, we have a whole intake sheet that we 23 encourage the attorneys to use that covers pretty much all 24 the basis that we believe are important. So it guess 25 through their education, their physical mental health</p>	<p style="text-align: right;">Page 23</p> <p>1 spend every three weeks just meeting with clients. And I 2 have to spend most of my time in court. A large time in 3 the office doing day-to-day office duties. I spend a great 4 deal of time on the road. So obviously, you know, when 5 you're prioritizing, you're cutting corners.</p> <p>6 Q Why is it important to your ability to 7 effectively represent clients to have adequate time to 8 communicate with them?</p> <p>9 A Well, if the goal is client-centered 10 representation and if your goal is to try to get your 11 client what they want, all right, it's difficult to know 12 what they want or they don't even know what they want 13 initially. They may say I want probation or I may want 14 this, but they don't understand the criminal process. You 15 have to explain that to them. They don't understand how 16 the case progresses. They don't understand what evidence 17 may be relevant, what evidence we need to obtain, what 18 witnesses we can call. There is a whole host of things 19 that you get from meeting with a client. Probably one of 20 the most important things you get from meeting with the 21 clients on a more than irregular basis is you get their 22 trust. You don't get anywhere in a case without a client's 23 trust because if they don't trust you they are not going to 24 open up to you about, you know, the evidence in a case, 25 what they really want. Often times, it's very adversarial</p>
<p style="text-align: right;">Page 22</p> <p>1 problems, kind of their story of the case. You know, are 2 they a citizen. Are there any immigration issues we need 3 to be aware of. Is there any evidence that exists or 4 witnesses that exists that we need to get a hold of, you 5 know, as soon as possible so the information doesn't become 6 stale or the witness disappears; that sort of thing. It 7 has a whole host of things. I encourage the attorneys to 8 use it because like me here today, I may not remember 9 everything single thing that I need to cover.</p> <p>10 Q In your opinion, do you have the time and 11 resources to communicate with your clients in the manner 12 that each case requires?</p> <p>13 A No.</p> <p>14 Q Why do you say that?</p> <p>15 A Because I have way too many clients to 16 communicate in an effective manner. Most of my 17 communication with my clients occurs on the day of court. 18 It occurs in a back hallway of a courtroom or, you know, in 19 the back of the courtroom in a less than ideal 20 attorney-client confident -- confidential setting. We try 21 to maintain confidentiality as best as possible. I'm not 22 saying I don't do jail visits and I'm not saying I don't 23 meet with clients in my office, but when you have 130 24 clients continuously and growing, it's just not possible. 25 If I were to spend one hour with every client, I would</p>	<p style="text-align: right;">Page 24</p> <p>1 proceeding with the client because the client think you 2 work for the State or you don't care about them and, you 3 know, I don't blame them because it's reflected in the 4 amount of time we spend with them. So there is a whole 5 host of things that go with, you know, meeting with the 6 client and spending time with them. Especially more than, 7 you know, the 10 or 15 minutes or so that we spend with a 8 client. Probably the bulk of the time you spend with the 9 client is when you're talking about a plea deal.</p> <p>10 Q And when you're talking to client about a plea 11 deal, does that typically take place in the courthouse or 12 at a jail visit?</p> <p>13 A I try to do that at a jail visit because it 14 generally requires more than, you know, ten minutes and you 15 want to give them time to think about it before they 16 actually have to do it. That being said, there is the 17 initial conversation at the jail. They are brought to 18 court, you know, the next day or a week later; whenever it 19 may be. At that point, that's when, you know, there may 20 have been some renegotiations or second thoughts and I 21 think you want to have a conversation the day of as well. 22 But that, again, ideally that would be in a confidential 23 setting where you have more time, but it's typically in the 24 back of a courtroom.</p> <p>25 Q When you do a jail visit are those done in</p>

6 (Pages 21 to 24)

<p style="text-align: right;">Page 25</p> <p>1 confidential settings?</p> <p>2 A It varies based upon the jail. In our most</p> <p>3 populated jail in Phelps County, they have two rooms. One</p> <p>4 room is a bond -- we call it the bond room. It used to be</p> <p>5 just a wall with a glass window. Because they didn't like</p> <p>6 the attorneys using the actual attorney room, they decided</p> <p>7 to build this sheetrock wall around the bond window and to</p> <p>8 provide us some sort of privacy. The problem is, is not</p> <p>9 insulated and it's not or soundproof. So if you're talking</p> <p>10 to your client, anything you say if you talk at a normal</p> <p>11 voice, like I think I am now, it can be heard in the</p> <p>12 waiting area. So that's a big problem in Phelps County.</p> <p>13 In Texas County, we have a confidential room. In Pulaski</p> <p>14 County we -- -- they have a phone that you pick up and</p> <p>15 there is a glass wall. When you pick up the phone it tells</p> <p>16 you this is being recorded. They tell us it's not, but,</p> <p>17 you know, it's hard. Again, when we are talking about a</p> <p>18 client trusting us and wanting to open up to us and that's</p> <p>19 the first thing they hear, it really impedes, I think, that</p> <p>20 safety that they feel that they would have if they could</p> <p>21 actually have some sort of contact visit. Prior to that,</p> <p>22 it was a broom closet that we met in but apparently</p> <p>23 somebody hid a shive in that room so they wouldn't let us</p> <p>24 use that anymore. They said it was for our safety. In</p> <p>25 Dent County, there is no real confidential area. They put</p>	<p style="text-align: right;">Page 27</p> <p>1 Q But if you had more time, do you think you</p> <p>2 would be able to ask more?</p> <p>3 A I would make it a much bigger issue if I had</p> <p>4 more time, so yes.</p> <p>5 Q So far we have been talking primarily about</p> <p>6 your caseload. In your opinion, do you think the attorneys</p> <p>7 in your office have sufficient time and resources to</p> <p>8 communicate effectively with their clients?</p> <p>9 A It's gotten better in the last couple of</p> <p>10 months since I started waitlisting. The average attorney</p> <p>11 caseload I think I said was 100 to 150. We are probably</p> <p>12 down to more like 75 now. So it's gotten better. Again,</p> <p>13 with my attorney experience, they really need I think</p> <p>14 somebody with them more often than not until they get more</p> <p>15 experienced to meet with those clients and they don't have</p> <p>16 somebody with them. There is not the time for that. So I</p> <p>17 still think their caseload is too high and they are not</p> <p>18 able to meet with their clients as much as possible, but</p> <p>19 it's getting better.</p> <p>20 Q Prior to initiating the waiting list, do you</p> <p>21 think they had adequate time and resources to communicate</p> <p>22 effectively with their clients?</p> <p>23 A No.</p> <p>24 Q Why not?</p> <p>25 A Because, again, they had way too many clients.</p>
<p style="text-align: right;">Page 26</p> <p>1 you down in the jail. You know, again, if you talk at a</p> <p>2 whisper maybe. Crawford County, you have a confidential</p> <p>3 area and in Maries County there is a confidential area. So</p> <p>4 about 50/50 there is confidence.</p> <p>5 Q If you had more time to communicate with your</p> <p>6 clients, do you think you would be able to secure a</p> <p>7 confidential locations for them to talk to you?</p> <p>8 A Yes.</p> <p>9 Q Why do you think that?</p> <p>10 A Because in most counties if you have the time</p> <p>11 and you arrange it, you can get a conference room or you</p> <p>12 can get some sort of other arrangement worked out where you</p> <p>13 can actually meet with a client in a confidential setting.</p> <p>14 So in Phelps County, I have no problem if I request to have</p> <p>15 a conference room. And I say I have no problem because I</p> <p>16 don't ask very often. I suspect if I ask very frequently</p> <p>17 that that would end very quickly because they have to</p> <p>18 station a guard outside the door. That's a similar thing</p> <p>19 in Pulaski County. If we ask, they will bring our clients</p> <p>20 up to a conference room and they will station a bailiff</p> <p>21 outside the door so that we can have a confidential</p> <p>22 meeting. Again, there are just ways that we can -- through</p> <p>23 motion practice, through simple request, we can get those</p> <p>24 things. But we don't ask very often so that's why I think</p> <p>25 we can get them when we ask.</p>	<p style="text-align: right;">Page 28</p> <p>1 There -- like I said, even if you were to spend an hour</p> <p>2 with every client it becomes impossible. To meet a client</p> <p>3 at almost any of our jails, you're waiting. You go to the</p> <p>4 jail and you wait to meet with the client. So one client,</p> <p>5 even if you only have a quick thing to say to them, it's</p> <p>6 probably going to take about an hour for one client. So</p> <p>7 you might be able to see eight clients in a day, you know.</p> <p>8 So it's not really -- you just can't do it with that many</p> <p>9 clients.</p> <p>10 Q On average, how often would you say you are</p> <p>11 able to meet with your clients, with each client?</p> <p>12 A Well, would you include court appearances?</p> <p>13 Q Let's leave out court appearances. Let me ask</p> <p>14 you this first: Would a court appearance be considered a</p> <p>15 qualifying contact as that term is used in the MSPD?</p> <p>16 A No.</p> <p>17 Q On average how often would you say you're able</p> <p>18 to have a qualifying contact with one of your clients?</p> <p>19 A I'm probably being generous if I said</p> <p>20 25 percent of the time.</p> <p>21 Q In what percentage of your cases do you</p> <p>22 conduct what you believe to be an adequate pretrial</p> <p>23 investigation?</p> <p>24 A Less than 25 percent.</p> <p>25 Q What would constitute an adequate pretrial</p>

7 (Pages 25 to 28)

<p style="text-align: right;">Page 29</p> <p>1 Investigation in your opinion?</p> <p>2 A It depends on the case, but obviously meeting</p> <p>3 with the client, investigating their leads; in many cases</p> <p>4 depositions. In every case a scene view and an evidence</p> <p>5 view. Consulting with experts in appropriate cases,</p> <p>6 potentially hiring experts for toxicology and things like</p> <p>7 that in the proper case. Interviewing favorable witnesses</p> <p>8 and reaching out to favorable witnesses. Gathering</p> <p>9 evidence that might exist, like surveillance or that sort</p> <p>10 of thing. So it really kind of depends on the case, but,</p> <p>11 you know, all of those things should be evaluated in every</p> <p>12 case.</p> <p>13 Q Why aren't you able to do that in 100 of</p> <p>14 percent of your cases?</p> <p>15 A There is not enough hours in the day.</p> <p>16 Q In your opinion, are the attorneys -- separate</p> <p>17 from your caseload -- are the attorneys in your office able</p> <p>18 to do the kinds of pretrial investigation that you think</p> <p>19 cases typically require?</p> <p>20 A No.</p> <p>21 Q Why not?</p> <p>22 A They don't have enough time.</p> <p>23 Q Without getting into specifics or I certainly</p> <p>24 don't want you to waive attorney-client privilege, can you</p> <p>25 think of a time where your representation of a case was</p>	<p style="text-align: right;">Page 31</p> <p>1 this witness would have been deposed, you're not sure if</p> <p>2 even had you known that you would have had the time to do a</p> <p>3 deposition?</p> <p>4 A I certainly would have tried, but I don't --</p> <p>5 everything you do is sacrificing time for another client.</p> <p>6 So would I have fit it in somehow, possibly, but that would</p> <p>7 be sacrificing time spent on another case.</p> <p>8 Q How frequently do you request discovery from</p> <p>9 the state in your cases?</p> <p>10 A Every case.</p> <p>11 Q How frequently do you file discovery related</p> <p>12 motions?</p> <p>13 A Rarely.</p> <p>14 Q In your opinion, do you have the time and</p> <p>15 resources to obtain and review discovery in the manner each</p> <p>16 case requires?</p> <p>17 A I can say that I do not plead clients or go to</p> <p>18 trial without obtaining discovery. Now, whether that's</p> <p>19 complete is another question, but I always obtain</p> <p>20 discovery. I always file a discovery request. I always</p> <p>21 obtain at least some basic discovery. If I believe there</p> <p>22 is something missing I will always do an informal request</p> <p>23 and that's why I don't file a whole lot of motions, but I</p> <p>24 have a decent amount of experience. I would guess, you</p> <p>25 know, based on how the questions are going -- and sorry if</p>
<p style="text-align: right;">Page 30</p> <p>1 hampered by a lack of time to investigate a case?</p> <p>2 A Yes.</p> <p>3 Q Can you speak vaguely about such a</p> <p>4 circumstance?</p> <p>5 A Sure. So we just had a trial yesterday. One</p> <p>6 of the witnesses that was called was a key witness for the</p> <p>7 State. I inherited this case from an attorney who left,</p> <p>8 who inherited it from an attorney who left, who inherited</p> <p>9 it from an attorney who left, who inherited from the</p> <p>10 original attorney. Depositions had been done of two of the</p> <p>11 witnesses, none of the others. It became only apparent to</p> <p>12 me during the trial that probably this witness should have</p> <p>13 been deposed. But that's -- would I have deposed him if I</p> <p>14 had the adequate time, I think I would have but I couldn't</p> <p>15 even make that analysis because of the time constraints.</p> <p>16 And so I think this client's case maybe was impacted by the</p> <p>17 lack of investigation.</p> <p>18 Q And so to break that down, in your opinion you</p> <p>19 lacked sufficient time to even determine whether a</p> <p>20 deposition would have been useful or necessary in this</p> <p>21 prior to trial?</p> <p>22 A That's correct.</p> <p>23 Q And you realized that at trial?</p> <p>24 A That is correct.</p> <p>25 Q And sitting here today knowing that ideally</p>	<p style="text-align: right;">Page 32</p> <p>1 I'm wrong -- but I would assume the next question is what</p> <p>2 about your attorneys. Again, based on the age of my staff</p> <p>3 and the experience level, I don't think most of them even</p> <p>4 understand what might be in a case. So they may receive</p> <p>5 discovery and sometimes discovery is nothing more than a</p> <p>6 probable cause statement and the indictment or the</p> <p>7 information. I would say many of my attorneys at that</p> <p>8 point don't even know what they are missing to ask for it</p> <p>9 or to file a supplemental request for discovery or motion</p> <p>10 to compel.</p> <p>11 Q In your opinion, if you or your attorneys had</p> <p>12 more time to spend on a particular case, would that assist</p> <p>13 in the ability of your younger attorneys to understand when</p> <p>14 discovery is missing and when they should be going back for</p> <p>15 more discovery?</p> <p>16 A Absolutely.</p> <p>17 Q Why do you say that?</p> <p>18 A Because I have seen the impact that the</p> <p>19 waitlist and relieving some stress off the attorneys has</p> <p>20 had. I have seen many more motions filed. I have seen a</p> <p>21 lot more evidentiary hearings. I have had a lot more</p> <p>22 complaints from the prosecutors about the number of</p> <p>23 depositions they've had to do. And these are new attorneys</p> <p>24 who are doing these really exciting things and making good</p> <p>25 challenges to cases and getting good results for clients</p>

8 (Pages 29 to 32)

<p style="text-align: right;">Page 33</p> <p>1 that prior to this, I mean, we weren't seeing. They</p> <p>2 weren't able to do it. They weren't doing it. The</p> <p>3 unfortunate part of that is, I think is that they don't</p> <p>4 really have somebody who can really mentor them along</p> <p>5 because now I am too overworked and I don't really have the</p> <p>6 staff or the experienced attorneys to fill in that gap.</p> <p>7 Q How frequently do you determine whether an</p> <p>8 expert witness would be necessary in a particular case?</p> <p>9 A Every case where I feel like one is needed. I</p> <p>10 guess I don't understand your question.</p> <p>11 Q It's a bad question. How often do you use an</p> <p>12 expert witness in your cases?</p> <p>13 A If it's a mental health issue, it's pretty</p> <p>14 frequent. So if I look at a case and I believe there is</p> <p>15 some sort of mental health issue that's needs to be</p> <p>16 evaluated, I will nearly always reach out to hire an</p> <p>17 expert.</p> <p>18 Q And by mental health issue do you mean for</p> <p>19 competency?</p> <p>20 A Primarily competency because certainly we</p> <p>21 would -- it's kind of a two-step process. You would have</p> <p>22 them evaluated first for competency. If they are currently</p> <p>23 competent, then you would have them look at could it be</p> <p>24 NGRI.</p> <p>25 Q I'm sorry what would it -- it could be?</p>	<p style="text-align: right;">Page 35</p> <p>1 and then get them to come to us, which is difficult. So</p> <p>2 that's a big factor that impedes the ability to hire</p> <p>3 experts. So you spend a lot of time trying to track them</p> <p>4 down. That's one of the big factors. It takes lot of time</p> <p>5 to hire an expert. I think I've lost track where the</p> <p>6 question was going.</p> <p>7 Q That is definitely an answer to question, but</p> <p>8 I'll ask it again in case there is anything else. In</p> <p>9 addition to the time spent locating and retaining an</p> <p>10 expert, does your caseload and lack of time impact your</p> <p>11 ability to work with an expert or use an expert effectively</p> <p>12 in your cases?</p> <p>13 A Yes.</p> <p>14 Q How?</p> <p>15 A Because we don't have the time to devote to a</p> <p>16 case, we don't have the time to get experts early enough.</p> <p>17 It's not uncommon where we end up being forced by the</p> <p>18 courts to proceed even though we have informed them they</p> <p>19 with are trying to locate an expert. And even though I do</p> <p>20 blame the courts, it usually is later in the process when</p> <p>21 we get around to actually evaluating the case. So you get</p> <p>22 a case and you may not be able to evaluate it until a week</p> <p>23 before trial at which point you start scrambling. You</p> <p>24 know, as I mentioned earlier it takes a lot of time to find</p> <p>25 an expert. Experts have dates that they are available and</p>
<p style="text-align: right;">Page 34</p> <p>1 A Not guilty by reason of insanity. Typically</p> <p>2 you're not going to have an expert get into NGRI unless the</p> <p>3 client is competent. Most of the time, you know, if you</p> <p>4 believe they are not competent that ends up being correct.</p> <p>5 Q Outside of competency and insanity issues, do</p> <p>6 you use experts for other cases?</p> <p>7 A Yes. In fact, let me just on competency and</p> <p>8 NGRI we would also -- one of the reasons I would also want</p> <p>9 it in those situations is for mitigation purposes. Even if</p> <p>10 I think they might be competent or even if I don't know and</p> <p>11 they come back competent, an expert would be great to</p> <p>12 explain some of the reasons why they may have done what</p> <p>13 they did even though they are completely functional. I</p> <p>14 also use experts, you know, a whole host of experts:</p> <p>15 fingerprint experts, blood experts, canine experts, field</p> <p>16 sobriety test experts.</p> <p>17 Q Does your caseload or lack of time impact your</p> <p>18 ability to work with experts where you think it's</p> <p>19 necessary?</p> <p>20 A Yes.</p> <p>21 Q How does it do -- how is it impacted?</p> <p>22 A One of the most difficult things about getting</p> <p>23 an expert in my area is locating one. I'm in a rural</p> <p>24 jurisdiction. There are no experts in my little area, so</p> <p>25 we always have to go to St. Louis or some other urban area</p>	<p style="text-align: right;">Page 36</p> <p>1 not available. Usually that's not going to be within the</p> <p>2 timeframe that we have. So it's our delay or our inability</p> <p>3 to prepare a case early on that causes us to miss the</p> <p>4 opportunity to having an expert later.</p> <p>5 Q And would you say your difficulties in</p> <p>6 retaining and utilizing experts effectively apply not only</p> <p>7 to your cases but also the cases of attorneys in your</p> <p>8 office?</p> <p>9 A Yes.</p> <p>10 Q Without going into specifics or compromising</p> <p>11 privilege, can you think of a time where your</p> <p>12 representation of a client was hampered by a lack of time</p> <p>13 to effectively use an expert?</p> <p>14 A Yes.</p> <p>15 Q Are you comfortable providing any further</p> <p>16 details on a case in, you know, vague, general terms?</p> <p>17 A So yes. We had a case recently where we</p> <p>18 needed an expert to evaluate a client regarding PTSD. She</p> <p>19 was charged with statutory rape and one of our theory of</p> <p>20 defense was she was actually the victim of the rape. So</p> <p>21 the assailant was this young man who was 17 or -- 16 or 17.</p> <p>22 He was a football player. He was a big guy. So we were</p> <p>23 saying because of her PTSD that is what she confessed to.</p> <p>24 She was confessing to being a victim when she was younger.</p> <p>25 So we had consulted with an expert and we're trying to get</p>

9 (Pages 33 to 36)

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Case 2:17-cv-04057-NKL Document 160-6 Filed 02/21/18 Page 10 of 74

<p style="text-align: right;">Page 37</p> <p>1 him in the case, but we had anticipated getting a</p> <p>2 continuance. Again, this is kind of a late preparation and</p> <p>3 we were denied the continuance. So because we didn't have</p> <p>4 the time to devote to the case because our expert couldn't</p> <p>5 get involved soon enough, we did not have the expert for</p> <p>6 the trial. We'll have him for mitigation, but it hurt our</p> <p>7 theory I think or it hurt the ability to present that</p> <p>8 theory to the jury.</p> <p>9 Q Is funding a constraint on your ability to</p> <p>10 hire or retain outside services in cases where you think</p> <p>11 it's necessary?</p> <p>12 A I have never been denied a request for funds.</p> <p>13 At least I may have initially been denied because I -- they</p> <p>14 needed more explanation. Whenever I needed an expert, I</p> <p>15 have always been provided the resources to obtain the</p> <p>16 expert.</p> <p>17 Q Do attorneys in your area frequently request</p> <p>18 continuances?</p> <p>19 A Yes.</p> <p>20 Q Why is that?</p> <p>21 A Because they are not ready for whatever the</p> <p>22 case may be.</p> <p>23 Q Why wouldn't they be ready for whatever the</p> <p>24 next hearing may be?</p> <p>25 A Because they haven't had adequate time. Well,</p>	<p style="text-align: right;">Page 39</p> <p>1 where they actually get charged. And by that time usually</p> <p>2 those defendants have moved to different facilities across</p> <p>3 the state. And so in those instances, the travel time</p> <p>4 could be anywhere from four to five hours to an hour.</p> <p>5 Q Roughly what percentage of your current docket</p> <p>6 are cases coming out of the prison?</p> <p>7 A It's relatively small. I think at any given</p> <p>8 time we have 20 to 30 cases out of the prison, but those</p> <p>9 are very time consuming cases.</p> <p>10 Q What kinds of cases are those?</p> <p>11 A They are usually committing violence on an</p> <p>12 inmate or committing violence on a prison guard.</p> <p>13 Q Has time spent on travel been an issue for</p> <p>14 attorneys in your office in terms of their ability to</p> <p>15 effectively represent their clients?</p> <p>16 A I believe so.</p> <p>17 Q Why do you say that?</p> <p>18 A Well, it's part of the whole picture. All but</p> <p>19 one county in my six counties requires significant travel</p> <p>20 time. So every other county is at least a 30-minute drive.</p> <p>21 So if you're going to go to court or you're going to go to</p> <p>22 jail, an hour of your day is gone just sitting in your car</p> <p>23 on the road at a minimum unless you're in Phelps County.</p> <p>24 So the impact is pretty high especially when most attorneys</p> <p>25 have court five days a week or are expected to see their</p>
<p style="text-align: right;">Page 38</p> <p>1 there is two reasons. One is the judges have time</p> <p>2 standards that they religiously follow that are ridiculous</p> <p>3 and don't take into consideration the individual case. So,</p> <p>4 you know, cases get from the date of arraignment to the</p> <p>5 date of trial is three months on any case. So that's a big</p> <p>6 part of the reason that I don't think any attorney, even</p> <p>7 one that is not overworked, could be ready in the amount of</p> <p>8 time that's given. But even if judges who are more lenient</p> <p>9 and who are more understanding of the workload issues, we</p> <p>10 still have to ask for continuances in those cases because,</p> <p>11 again, you just can't get the work done in the time</p> <p>12 allotted. It doesn't matter if you're given a month or a</p> <p>13 year because in the interim you're handling hundreds of</p> <p>14 cases and you just kind of keep shoveling everything down</p> <p>15 the road.</p> <p>16 Q You mentioned travel earlier. How much time</p> <p>17 do you spend traveling for case related?</p> <p>18 A It varies based on the county you're in. So</p> <p>19 our furthest county is about 50 miles. It's about an hour</p> <p>20 drive to get to court or to do a jail visit; that's our</p> <p>21 furthest. The closest is to our office is Phelps County.</p> <p>22 It's maybe a mile and maybe about seven or eight minute</p> <p>23 drive. We do -- because we have a prison in our</p> <p>24 jurisdiction and the cases that occur within that prison,</p> <p>25 the criminal cases, typically take two to three years to</p>	<p style="text-align: right;">Page 40</p> <p>1 clients. If you're going to Texas County, which is an hour</p> <p>2 one way, every day two hours a day, you know, ten hours a</p> <p>3 week, gone. So over a day, you know, of their time is</p> <p>4 wasted driving.</p> <p>5 Q On average how frequently do you file</p> <p>6 suppression motions?</p> <p>7 A Not very often. As needed. I don't handle a</p> <p>8 lot of low level -- well, I used to not handle a lot of the</p> <p>9 drug cases and that's typically where you see the most</p> <p>10 suppression issues.</p> <p>11 Q In your opinion, do you have sufficient time</p> <p>12 to investigate when suppression motion may be needed?</p> <p>13 A Most suppression issues I file are based off</p> <p>14 of my experience. They are not based upon research. So</p> <p>15 the research follows the filing of the motion. So, again,</p> <p>16 that's something different between I think a more senior</p> <p>17 attorney versus a newer attorney. A newer attorney sees a</p> <p>18 traffic stop and they have to research is there a case on</p> <p>19 point and then they learn that as they grow as an attorney.</p> <p>20 Ideally, I would spend more time doing legal research but</p> <p>21 that's a luxury that we don't have.</p> <p>22 Q Do you think the attorneys in your office have</p> <p>23 adequate time to research and file suppression motions?</p> <p>24 A No.</p> <p>25 Q Why do you say that?</p>

10 (Pages 37 to 40)

<p style="text-align: right;">Page 41</p> <p>1 A They don't have the time.</p> <p>2 Q Are there other kinds of pretrial motions that</p> <p>3 you typically file?</p> <p>4 A So if the case is actually trial bound,</p> <p>5 typically we would file motions in limine, various kinds of</p> <p>6 things on what the case needed. More recently we have been</p> <p>7 filing motions to dismiss due to probable cause issues,</p> <p>8 which has been kind of a new thing that we have been</p> <p>9 attacking.</p> <p>10 Q Why have you newly been filing motions to</p> <p>11 dismiss?</p> <p>12 A One, the attorneys have time to actually</p> <p>13 litigate these issues. One of the problems that we have is</p> <p>14 that in many jurisdictions they have gone to indictments.</p> <p>15 So we don't have a preliminary hearing to determine</p> <p>16 probable cause. We have a grand jury determining probable</p> <p>17 cause. The joke is a grand jury would indict a ham</p> <p>18 sandwich. Everybody kind of hears that and it's true. So</p> <p>19 we have to be creative in how we try to dispose of these</p> <p>20 cases and be efficient so that they don't end up going to</p> <p>21 trial. The biggest examples of these are assaults and</p> <p>22 domestic assaults. Most of those cases are never going to</p> <p>23 go to trial because the victim is never going to corporate</p> <p>24 or the victim said it didn't happen or something to that</p> <p>25 effect. So we have challenged -- the only way we have</p>	<p style="text-align: right;">Page 43</p> <p>1 Q How often do you take cases to trial?</p> <p>2 A I would say one percent of the cases maybe go</p> <p>3 to trial, if that.</p> <p>4 Q Do you think enough of your cases are going to</p> <p>5 trial?</p> <p>6 A No.</p> <p>7 Q Why not?</p> <p>8 A When you have the time to dedicate to a case,</p> <p>9 it always gets better -- well, almost always gets better.</p> <p>10 You know, you begin to poke holes in the State's evidence.</p> <p>11 You begin to find your own evidence. You consult with</p> <p>12 experts. The case gets better. The prosecutor gets tired,</p> <p>13 they don't want to move forward with it. You know, so</p> <p>14 going, you know, forcing a case to go to trial and being</p> <p>15 able to prepare it like you should for trial, you know,</p> <p>16 ultimately ends up getting to trial. The other thing that</p> <p>17 will help, you know, the more effort you put into a case,</p> <p>18 more likely you're able to get your client out on bond. If</p> <p>19 your clients out on bond, they are more likely to go to</p> <p>20 trial. So that's another thing that if you have time, you</p> <p>21 can litigate the bond and get them out of jail. If they</p> <p>22 are not in jail, they are just like just get me out of</p> <p>23 here. I don't care, I'll plead to whatever. That's the</p> <p>24 kind of thing you see a lot.</p> <p>25 Q So I want to just unpack that a little more.</p>
<p style="text-align: right;">Page 42</p> <p>1 figured out how is to, you know, getting the victim in on a</p> <p>2 challenging the probable cause saying there is no probable</p> <p>3 cause because the victim said it didn't happen. And if the</p> <p>4 law enforcement or the prosecutor brought the victim into</p> <p>5 the grand jury, the grand jury would have indicted.</p> <p>6 Q And that is a motion that requires time in</p> <p>7 your opinion?</p> <p>8 A Yes. I mean, you have to first you have to</p> <p>9 meet with the client and kind of get a feel for the</p> <p>10 circumstances of the case. Then you have -- if they inform</p> <p>11 you that this didn't happen or he or she doesn't want to</p> <p>12 pursue it or whatever the case may be, then you have to</p> <p>13 investigate that claim and contact the witnesses and speak</p> <p>14 with them and you have to get them subpoenaed to come to</p> <p>15 court. And then you actually have to have a hearing and</p> <p>16 present the evidence to the court and make an argument as</p> <p>17 to why it should be dismissed.</p> <p>18 Q Does lack of time or resources impact your</p> <p>19 attorneys ability to prepare and file these motions?</p> <p>20 A Absolutely, which is why we never saw any up</p> <p>21 until the last two months.</p> <p>22 Q When you say up until the last two months,</p> <p>23 you're referring to the waiting list reducing caseloads for</p> <p>24 your other attorneys?</p> <p>25 A That's correct.</p>	<p style="text-align: right;">Page 44</p> <p>1 A Okay.</p> <p>2 Q Why do clients who are out on bond -- why are</p> <p>3 clients out on bond more likely to go to trial?</p> <p>4 A Because even though their freedom is still</p> <p>5 impacted by the fact they have criminal charges pending</p> <p>6 against them, they have their freedom. They are out of</p> <p>7 custody. They are able to be with family and friends and</p> <p>8 they are able to work and they are able to kind of maintain</p> <p>9 some normal life even though they have to occasionally</p> <p>10 appear in court even though they have this charge hanging</p> <p>11 over them. When they are in jail, the jails are miserable.</p> <p>12 They're overcrowded. They mistreat these people. They</p> <p>13 don't even treat them like people. So all that -- their</p> <p>14 whole being is how do I get out of this situation. What's</p> <p>15 the fastest route to get me out of custody. If that's</p> <p>16 pleading guilty, they'll pled guilty.</p> <p>17 Q Just lost my train of thought for a second,</p> <p>18 sorry. Do you have adequate time to prepare and file bond</p> <p>19 motions?</p> <p>20 A No.</p> <p>21 Q Why not?</p> <p>22 A Filing bond motions, I mean, it's one thing --</p> <p>23 I file bond motions in most cases, but it's just a</p> <p>24 paragraph that kind of references the law. To file a bond</p> <p>25 motion that actually has impact, is to actually investigate</p>

11 (Pages 41 to 44)

<p style="text-align: right;">Page 45</p> <p>1 the facts of the case and your client's history. You want</p> <p>2 to know things like where does your client live, how long</p> <p>3 has he lived there, does he have transportation, does he</p> <p>4 have family in the area, does he have a criminal history</p> <p>5 that is maybe not what the prosecutor says it is. You</p> <p>6 know, what are the strengths and weaknesses of the State's</p> <p>7 case. Maybe it's not as strong, so there should be more</p> <p>8 lenience given. Those are the things I would want to put</p> <p>9 in my motion. And then I would also want to get witnesses</p> <p>10 to come to court to testify about the virtues of my client.</p> <p>11 Maybe the alleged victim if it's, again, the domestic case</p> <p>12 where she or he is saying it didn't happen. That takes a</p> <p>13 lot of time and that is again something we don't have a lot</p> <p>14 of. So you sacrifice that a lot of times to get the case</p> <p>15 ready for trial or, quite honestly, you don't even really</p> <p>16 have time to even consider it because, again, you have 15</p> <p>17 minutes maybe with the client. You file your basic motion.</p> <p>18 You make your basic argument to the court and, you know,</p> <p>19 the court has their predetermined bonds that they just</p> <p>20 throw out there.</p> <p>21 Q What are the predetermined bonds?</p> <p>22 A Well, it varies by the judge. But in my</p> <p>23 jurisdictions for most lower-level felonies, it's going to</p> <p>24 be 25,000. For B and A felonies and unclassified felonies,</p> <p>25 it's going to be probably somewhere between \$100,000.00 to</p>	<p style="text-align: right;">Page 47</p> <p>1 A There are not enough hours in the day.</p> <p>2 Q What are the kinds of things that you would</p> <p>3 want to do to effectively prepare for trial?</p> <p>4 A Well, the first thing would be to meet with</p> <p>5 the client, go through what we have already kind of talked</p> <p>6 about. I would want to make sure that I have evaluated the</p> <p>7 State's discovery. That I had done my own independent</p> <p>8 investigation. That I had evaluated the necessity of</p> <p>9 experts. That I had done depositions in most cases of the</p> <p>10 main witnesses for the State. That I had prepped my</p> <p>11 witnesses for their cross exam and direct examinations.</p> <p>12 That I have adequately prepared my client for knowing what</p> <p>13 the trial process is and whether or not he wants judge or</p> <p>14 jury or jury or judge sentencing, whether or not he or she</p> <p>15 wants to testify. I would want to make sure that I spent</p> <p>16 ample time preparing my direct and cross examinations.</p> <p>17 That I spend time preparing an open and closing argument,</p> <p>18 my voir dire.</p> <p>19 Q Without violating privilege or getting too</p> <p>20 deep into specifics, can you think of a time where your</p> <p>21 representation of a client was hampered by a lack of time</p> <p>22 to prepare for trial?</p> <p>23 A Yes.</p> <p>24 Q Could you give vague generalities and the</p> <p>25 kinds of things that you were unable to prepare for?</p>
<p style="text-align: right;">Page 46</p> <p>1 \$1 million. The most extreme examples in one county the</p> <p>2 judge will set drug cases usually at \$500,000, even</p> <p>3 misdemeanor marijuana, which is fine only. So it varies,</p> <p>4 but the minimum typically on felonies is going to be</p> <p>5 \$25,000.00 across the spectrum.</p> <p>6 Q And just to make sure I understand right,</p> <p>7 there are misdemeanor marijuana cases in your area where</p> <p>8 defendants are held on \$500,000.00 bonds?</p> <p>9 A It happens and they are fined only to begin</p> <p>10 with.</p> <p>11 Q In your opinion if you had adequate time and</p> <p>12 resources would that assist in your ability to advocate for</p> <p>13 bond reductions?</p> <p>14 A Yes.</p> <p>15 Q In your opinion, do the attorneys in your</p> <p>16 office have adequate time to prepare and advocate for bond</p> <p>17 motions and bond reductions?</p> <p>18 A No.</p> <p>19 Q Why not?</p> <p>20 A Lack of resources.</p> <p>21 Q So coming back to trials. In your opinion, do</p> <p>22 you have sufficient time and resources to adequately</p> <p>23 prepare for trial?</p> <p>24 A No.</p> <p>25 Q Why not?</p>	<p style="text-align: right;">Page 48</p> <p>1 A Well, again I gave the example of the trial I</p> <p>2 had yesterday. I had a trial last Monday and that trial</p> <p>3 ate up a bulk of the time. I finished that -- well, the</p> <p>4 prosecutor dismissed it during the trial. The next day I</p> <p>5 spent the day in court. The next day, I spent the day at a</p> <p>6 district defender meeting. The next day I spent the day in</p> <p>7 court. The next day I spent I believe -- I'm trying to</p> <p>8 think that would have been Friday, not sure what I did</p> <p>9 Friday. I spent Saturday with my family for Christmas</p> <p>10 event. I spend Sunday prepping this trial. I spent Monday</p> <p>11 in court; that was supposed to be the start of the trial.</p> <p>12 It got -- we didn't have enough jurors show up, so we had</p> <p>13 to reset to yesterday. So from the time of the last trial,</p> <p>14 a week later to this trial, I wasn't able really to prepare</p> <p>15 at all except for Sunday. So what I ended up doing,</p> <p>16 knowing that was going to happen, I assigned the case. I</p> <p>17 remained second chair, but I assigned it to an attorney in</p> <p>18 my office to basically be able to prep it. The only reason</p> <p>19 that attorney was able to kind of do it -- and this was a</p> <p>20 stat rape first, so unclassified felony where the range of</p> <p>21 punishment is ten years to life or 30, was because he is</p> <p>22 leaving our office at the end of the week. So we haven't</p> <p>23 given him any new cases in the last month. But he has less</p> <p>24 than a year and half experience, so he did a great job.</p> <p>25 But, again, I mean, is somebody who is looking at life in</p>

12 (Pages 45 to 48)

<p style="text-align: right;">Page 49</p> <p>1 prison, should they have an attorney as their first chair</p> <p>2 who only has a year -- little over a year experience. And</p> <p>3 the only reason I gave it to him was because I just</p> <p>4 couldn't do it.</p> <p>5 MR. SHAHABIAN: I think now is a good time to</p> <p>6 go off the record and take a break. Say five minutes.</p> <p>7 MS. SHIPMA: Matt, what did you do Friday?</p> <p>8 A Oh, right.</p> <p>9 MS. SHIPMA: You spent Friday with me.</p> <p>10 A That's why I couldn't remember.</p> <p>11 THE VIDEOGRAPHER: We are going off the</p> <p>12 record. The time is 2:41 p.m. This ends Media 1.</p> <p>13 (A recess was taken.)</p> <p>14 THE VIDEOGRAPHER: Going back on the record.</p> <p>15 The time is 2:49 p.m. This begins Media 2.</p> <p>16 Q (By Mr. Shahabian) Thanks for coming back,</p> <p>17 Mr. Crowell.</p> <p>18 A You're welcome.</p> <p>19 Q I would like to turn to guilty pleas. How do</p> <p>20 you typically approach a case where a client is considering</p> <p>21 a plea offer?</p> <p>22 A So the offer has already been conveyed?</p> <p>23 Q Well, let's take a step back. How do you</p> <p>24 approach a case where the case may result in a guilty plea?</p> <p>25 A If it looks like that's the direction the case</p>	<p style="text-align: right;">Page 51</p> <p>1 A Sometimes, but rarely.</p> <p>2 Q Why do you say rarely?</p> <p>3 A Because most of the time we are rushing</p> <p>4 through the case. And I think any time, you know, an</p> <p>5 attorney shouldn't be rushing through a case. You should</p> <p>6 be taking the time the case deserves and the client</p> <p>7 deserves. But because we rush, we are inevitably going to</p> <p>8 miss things, potentially. So it's hard to know. I mean,</p> <p>9 there are some cases where you're rushed and it's fine, but</p> <p>10 I think that's the exception not the norm.</p> <p>11 Q In your opinion, do the attorneys in your</p> <p>12 office have adequate time and resources to prepare their</p> <p>13 cases to the point where they can advise and negotiate</p> <p>14 effectively for guilty pleas?</p> <p>15 A No.</p> <p>16 Q Why not?</p> <p>17 A Most of them don't have the experience to know</p> <p>18 whether or not a client should plea or not to a particular</p> <p>19 case.</p> <p>20 Q Why is experience important to determining</p> <p>21 whether to plea?</p> <p>22 A Because you have to know whether or not that</p> <p>23 case and the facts of that case if you pushed it to trial,</p> <p>24 you would get a different outcome. The other factor is an</p> <p>25 inexperienced attorney is at a great disadvantage of</p>
<p style="text-align: right;">Page 50</p> <p>1 is going, I would first I want to consult with the client</p> <p>2 to make sure that I'm reading that correctly. Then if</p> <p>3 that's correct, I would go to the prosecutor, obtain an</p> <p>4 offer, take that offer back to the client and begin the</p> <p>5 negotiation process. Well, I guess the negotiation process</p> <p>6 really begins the first time you approach the prosecutor,</p> <p>7 but. So from there, once the offer has been conveyed and</p> <p>8 potentially accepted by the client, that pretty much ends</p> <p>9 the guilty plea process. But if the client refuses the</p> <p>10 offer, that then again you do negotiations.</p> <p>11 Q Do you have adequate time and resources to</p> <p>12 negotiate and consult with your client for guilty pleas?</p> <p>13 A I think in order to adequately consult with</p> <p>14 the client about a guilty plea you have to have already</p> <p>15 done all the work. So it's not a simple answer as yes or</p> <p>16 no because it would assume that you've already investigated</p> <p>17 the case. You have interviewed the witnesses. You have</p> <p>18 done everything that an attorney should do in the case to</p> <p>19 be competent. So if I were competent in my representation,</p> <p>20 then yes.</p> <p>21 Q Do you think you -- you said if you were</p> <p>22 competent in the representation, your answer would be yes.</p> <p>23 In your experience, are you able to do all of those things</p> <p>24 that you think are necessary to provide adequate advice on</p> <p>25 a guilty plea?</p>	<p style="text-align: right;">Page 52</p> <p>1 negotiation with the prosecutor. If they've never tried a</p> <p>2 case, the prosecutor can use that to their advantage. It's</p> <p>3 a scary thing to try a case for the first time. And so I</p> <p>4 think a lot of young attorneys will oversell a plea deal</p> <p>5 because they don't -- they are afraid of a trial or they</p> <p>6 are afraid they will screw something up. So rather than</p> <p>7 take that risk and put forth that effort, they kind of</p> <p>8 force the plea deal. That being said, if they had the time</p> <p>9 or if they had a mentor or somebody who could help them</p> <p>10 long the way, I think that prevents a lot of that.</p> <p>11 Q So in your opinion even for cases with</p> <p>12 inexperienced lawyers, having more time and more resources</p> <p>13 would assist in their ability to effectively advocate and</p> <p>14 negotiate guilty pleas?</p> <p>15 A Yes. And one of the resources I think that is</p> <p>16 missing a lot of times is to have a mentorship at least in</p> <p>17 my office. I can't speak for other places.</p> <p>18 Q Without getting into specifics or compromising</p> <p>19 privilege, can you think of a time where a client may have</p> <p>20 received a better plea deal had you or one of your</p> <p>21 attorneys had more time to devote to the case?</p> <p>22 A Hard to say because you don't know that they</p> <p>23 would have.</p> <p>24 Q Fair.</p> <p>25 A I can say that I have intervened in cases</p>

13 (Pages 49 to 52)

<p style="text-align: right;">Page 53</p> <p>1 where I felt the client wasn't getting the best offer</p> <p>2 because the prosecutors are taking advantage of the</p> <p>3 inexperience of my younger attorneys. I can -- there are</p> <p>4 many instances where I have been able to get better deals.</p> <p>5 Q In your opinion, if they had more time and</p> <p>6 resources would you have to intervene as frequently?</p> <p>7 A No.</p> <p>8 Q I'm going to hand you a document that I'll ask</p> <p>9 the court reporter to mark Plaintiff's Exhibit 55 -- never</p> <p>10 mind. Are any of your attorney's specialist at immigration</p> <p>11 law?</p> <p>12 A No.</p> <p>13 Q Do you or your attorneys have training in</p> <p>14 immigration consequences of criminal convictions?</p> <p>15 A I have had very minimal training and I suspect</p> <p>16 probably my APD IV has had training, minimal training.</p> <p>17 Q What steps do attorneys in your office take to</p> <p>18 evaluate the immigration consequences a client may be</p> <p>19 facing?</p> <p>20 A In my office we don't have a lot of</p> <p>21 immigrants. We always -- like I mentioned the intake</p> <p>22 sheet. One of the things the questions that we ask as part</p> <p>23 of the intake is are you a U.S. citizen, were you born in</p> <p>24 the United States. That's also a question on the</p> <p>25 Acknowledgment of Rights form that we have to use for</p>	<p style="text-align: right;">Page 55</p> <p>1 consciously, but certainly subconsciously you're going to</p> <p>2 limit the number of visits you do because of the time. But</p> <p>3 I know in that particular instance I'm not hundred percent</p> <p>4 sure it was an immigrant or not but I remember because they</p> <p>5 were Spanish speaking, that there was a lot of issues</p> <p>6 getting a translator to come to the rural part, rural</p> <p>7 county, Crawford county. The attorney, because of their</p> <p>8 schedule, had great difficulty in arranging times that</p> <p>9 would work for everyone. Court was a major issue getting a</p> <p>10 translator to sit next to the attorney and that sort of</p> <p>11 thing.</p> <p>12 Q So the caseload and time constraints affect</p> <p>13 the ability to obtain outside resources like translators?</p> <p>14 A Yes.</p> <p>15 Q Do your attorneys ever consult with social</p> <p>16 workers for sentencing or other aspects of their cases?</p> <p>17 A I can tell you in my practice, I have</p> <p>18 consulted with a sentencing mitigation specialist twice.</p> <p>19 Q In your opinion, if you had adequate time and</p> <p>20 resources would you consult with a sentencing mitigation</p> <p>21 expert more frequently?</p> <p>22 A If I had the resources, I would do it in every</p> <p>23 case where I did not have a plea agreement.</p> <p>24 Q Why would you do it in every case?</p> <p>25 A Because I have seen the impact it has. Part</p>
<p style="text-align: right;">Page 54</p> <p>1 guilty pleas; are you a U.S. citizen. It is very rare to</p> <p>2 get someone who is not a U.S. citizen in my jurisdiction.</p> <p>3 If we get somebody who is not a U.S. citizen, we would</p> <p>4 generally, I would advise the attorney to consult with an</p> <p>5 expert outside of our office. So I think, I don't remember</p> <p>6 their name, but MSPD used to and may still have an attorney</p> <p>7 out of St. Louis that is a specialist in immigration law.</p> <p>8 If they didn't or if that person no longer is there or that</p> <p>9 position no longer exists, then I would advise my attorneys</p> <p>10 to consult a private attorney. But that being said, it is</p> <p>11 rare that we get an immigrant.</p> <p>12 Q Are you aware of any cases where a lack of</p> <p>13 time or resources hindered the ability to advise a client</p> <p>14 on immigration consequences?</p> <p>15 A Yes.</p> <p>16 Q Can you recall generally what the</p> <p>17 circumstances of that case were?</p> <p>18 A I can and let me preface it by I'm not a 100</p> <p>19 percent sure they were an immigrant but I know they were</p> <p>20 Spanish speaking. So any time you get somebody that</p> <p>21 English is not their first language, you know, you need to</p> <p>22 decide whether or not to bring in a translator. That</p> <p>23 creates a lot of problems in terms of, again time is always</p> <p>24 an issue. So that takes a lot more time when you have to</p> <p>25 go through a translator. So I suspect, even though not</p>	<p style="text-align: right;">Page 56</p> <p>1 of what those mitigation specialist can do is they know the</p> <p>2 resources available. They know the right questions to ask.</p> <p>3 They can do a lot more than I know how to do. Part of that</p> <p>4 is they have the time. So I suppose if I had unlimited</p> <p>5 time, I probably wouldn't need one very often because I</p> <p>6 could do it myself. But when I have consulted with them</p> <p>7 it's amazing what they can do and the way it impacts the</p> <p>8 outcome of the sentencing hearing. Things that I just</p> <p>9 couldn't do it on my own. The other issue is, again,</p> <p>10 because of their experience and their knowledge, they can</p> <p>11 take an issue that we have in a rural areas where there is</p> <p>12 no halfway homes. We don't even have a homeless shelter in</p> <p>13 any of my counties. We don't have any real good treatment</p> <p>14 programs. There is none of that. So it's very difficult</p> <p>15 for us to find those facilities and get our clients into</p> <p>16 them to help assist them with, you know, better outcomes in</p> <p>17 their case and hopefully rehabilitation, drug counseling,</p> <p>18 and that sort of thing. Those mitigating specialist,</p> <p>19 again, they know the whole state and they know other states</p> <p>20 and they can provide those resources.</p> <p>21 Q And those mitigation specialist are not MSPD</p> <p>22 employees?</p> <p>23 A I think there used to be mitigation</p> <p>24 specialists. I never known them and when I have used them</p> <p>25 in the past they are private individuals.</p>

14 (Pages 53 to 56)

<p style="text-align: right;">Page 57</p> <p>1 Q Do other attorneys in your office use 2 mitigation specialists for sentencing? 3 A I think I have approved one request that's 4 because there has only been one request. 5 Q In your opinion, do resource and time 6 constraints impact your attorneys ability to use resources 7 like mitigation sentencing consultants? 8 A Yes. Again, I would use them all the time if 9 I had the ability and the time to do it. The younger 10 attorneys, I don't think they know what they are or that 11 they even are a possibility. 12 Q If you had the time would you advise, and if 13 your attorneys had the time, would you advise them to be 14 using sentencing mitigation specialists? 15 A Absolutely. 16 Q How does your office handle juvenile cases? 17 A Just like any other. 18 Q What kind of juvenile cases do you receive? 19 A We don't receive very many. I think there is 20 kind of a reluctance by the juvenile division to encourage 21 the use of attorneys in our area. They do not like us to 22 get involved so they find ways to avoid getting us 23 involved. 24 Q How can they avoid getting the MSPD involved 25 in the juvenile --</p>	<p style="text-align: right;">Page 59</p> <p>1 attorneys? 2 A Because what's at stake. So generally 3 speaking, we're only getting involved if it's a 4 certification hearing. If it's just a detention hearing, 5 you know, I might assign that to someone else. But the 6 certification hearing, because of the severity and what's 7 at risk for that young person, I want it to go to an 8 experienced attorney. 9 Q And for the record, what is at risk for a 10 juvenile? 11 A Well, if they are being certified, it means 12 they are going to be removed from the juvenile system and 13 tried as an adult in the adult court. 14 Q How often does your office handle a 15 certification hearing? 16 A A couple a year. 17 Q Does your caseload or lack of resources impact 18 your office's ability to effectively represent juveniles in 19 certification hearings? 20 A Yes. 21 Q How? 22 A Well, like I said, we treat them like any 23 other case other than I try to assign them to more senior 24 attorneys, but the time constraints still apply to those 25 cases. The other issue when you're dealing with</p>
<p style="text-align: right;">Page 58</p> <p>1 A I don't know if they still do this, but it was 2 about a year ago or so they were telling the juveniles that 3 if they could take the deal or they could get an attorney, 4 but if they got an attorney it would be worse for them. 5 Q And would these deals involve detention? 6 A I think typically the way it works -- and this 7 is just from anecdotal type evidence -- is typically it's 8 going to be probation first. Then it's going to be 9 detention if probation fails. We almost never get involved 10 at the probation level. If we get involved, it's to stand 11 there as they go to detention. And then we also do 12 certification hearing. 13 Q Are there any attorneys in your office who 14 specialize in juvenile proceedings? 15 A No. 16 Q Do any attorneys in your office have 17 specialized training or have any training in juvenile 18 proceeding? 19 A Minimal. 20 Q How do you assign juvenile cases to attorneys 21 in your office? 22 A Generally speaking I assign them to the 23 experienced attorneys. So myself, my deputy district 24 defender and two other attorneys. 25 Q Why do you assign them to the more experienced</p>	<p style="text-align: right;">Page 60</p> <p>1 certification is generally the children are going to be in 2 DYS custody at that point. So they are going to be held 3 pending the hearing. That generally means that they are 4 going to be shipped to some far corner of the state and so 5 it's very difficult to have communication with them. And 6 with a juvenile, they require, in some instances, a lot 7 more face-to-face time because of their development. And 8 so it ends up taking a great deal of time to meet with the 9 client more regularly than say somebody who is, you know, 10 on their fourth or fifth felony who has been through the 11 system and they understand it. So that impacts the ability 12 to represent them because, again, we just don't have the 13 time or resources to meet with them on a regular basis. 14 The charges are usually very severe. So we are usually 15 dealing with murder or rape or something to that effect. 16 Same challenges with those; you just don't have the 17 resources to devote, you know, a hundred hours or whatever 18 it takes to handle a murder case. You do your best with 19 what you got, but at the end of the day you're probably not 20 doing enough. 21 Q In your opinion, can the attorneys in your 22 office currently adequately represent all of the clients on 23 their docket? 24 A No. 25 Q Why not?</p>

15 (Pages 57 to 60)

<p style="text-align: right;">Page 61</p> <p>1 A There is too many.</p> <p>2 Q In your opinion, could any attorney, no matter</p> <p>3 how expert, adequately represent clients given the</p> <p>4 constraints facing lawyers in your office?</p> <p>5 A No, there is -- well, no.</p> <p>6 Q Why not?</p> <p>7 A The idea that you could handle 150 felonies or</p> <p>8 150 misdemeanors at one point in time effectively, I think</p> <p>9 if you have experience and you know what you can do in</p> <p>10 those cases and the impacts that you can have if you devote</p> <p>11 the time necessary to those; I think any experienced</p> <p>12 attorney would say that's not possible. There are</p> <p>13 attorneys certainly who say I can do it. But I think if</p> <p>14 you got down to it and we talked about the guidelines; if</p> <p>15 you went through the guidelines and said well, have you</p> <p>16 done everything that's in the guidelines, I don't think</p> <p>17 that's possible. I don't know what the number would be,</p> <p>18 but I can tell you that the numbers in my office I don't</p> <p>19 think it would be possible for even the best attorney to</p> <p>20 handle the caseload.</p> <p>21 Q I'm going to hand you an exhibit that's</p> <p>22 previously been marked Plaintiff 50. If you can just take</p> <p>23 a second and flip through that. Do you recognize this</p> <p>24 document?</p> <p>25 A I recognize what's contained -- well, I</p>	<p style="text-align: right;">Page 63</p> <p>1 RubinBrown.</p> <p>2 Q Setting aside the RubinBrown metrics, I'm not</p> <p>3 asking you to give me an exact percentage of how far over</p> <p>4 capacity you are, but roughly would you say this accurately</p> <p>5 reflects that your office is over capacity?</p> <p>6 A It reflects my office is over capacity, but I</p> <p>7 don't think it's completely accurate.</p> <p>8 Q Why not?</p> <p>9 A Well, it expects or I think it takes into</p> <p>10 consideration that I have 14 attorneys and 14 attorneys is</p> <p>11 what I would have if I'm fully staffed. In the last year I</p> <p>12 have had to hire ten attorneys, so I have had -- I don't</p> <p>13 know what percent over -- I'm constantly hiring. In fact,</p> <p>14 I have an interview with an attorney tomorrow afternoon --</p> <p>15 yeah, tomorrow afternoon for an opening. The other thing I</p> <p>16 think that the RubinBrown numbers, why I think it may be</p> <p>17 actually a little low based on that, is because I think it</p> <p>18 takes into account experienced attorneys that you know what</p> <p>19 you're doing. Again, most of my attorneys are brand new.</p> <p>20 So they don't necessarily know what they are doing. So I</p> <p>21 have to spend a lot of time with them and the other</p> <p>22 experienced attorneys are spending a lot of time with them</p> <p>23 and that's time they are not actually spending on their</p> <p>24 cases. So I think that is probably also not reflected in</p> <p>25 the 252.2 percent.</p>
<p style="text-align: right;">Page 62</p> <p>1 recognize most of it. I don't recognize -- individually, I</p> <p>2 don't recognize the document itself.</p> <p>3 Q Could you flip to the last page?</p> <p>4 A Yes.</p> <p>5 Q Do you recognize this page?</p> <p>6 A I do.</p> <p>7 Q What is it?</p> <p>8 A It is the caseload metrics for the system and</p> <p>9 it appears to be for the period of July 2016 to June 30,</p> <p>10 2017. So I guess fiscal year 2017.</p> <p>11 Q Do you see Area 25 on here?</p> <p>12 A I do.</p> <p>13 Q What rank is it listed on this document? I</p> <p>14 think it's over on the right-hand side.</p> <p>15 A We are ranked it appears to be 17th.</p> <p>16 Q What percentage -- what does it say on this</p> <p>17 document for percentage of capacity for Area 25?</p> <p>18 A It says 252.2 percent.</p> <p>19 Q Do you have an understanding of what that</p> <p>20 percentage reflects?</p> <p>21 A My understanding is it reflects the amount we</p> <p>22 are over capacity. So if we had adequate staff -- and I</p> <p>23 believe it's based on the RubinBrown Missouri Project -- if</p> <p>24 we had adequate staff -- or we are 252.2 percent over the</p> <p>25 amount of cases we should have based on that analysis by</p>	<p style="text-align: right;">Page 64</p> <p>1 Q And so in your opinion this is a more</p> <p>2 conservative estimate of the overwork in your office than</p> <p>3 you think would be fairly reflected?</p> <p>4 A I do. And it's conservative also because it</p> <p>5 doesn't take into account, at least my understanding is it</p> <p>6 doesn't take into account administrative tasks and</p> <p>7 training. It also expects that you're working 50 -- yeah,</p> <p>8 50 weeks out of the year, which, you know, my attorneys</p> <p>9 probably do. I have attorneys that lose time every year.</p> <p>10 But we get three weeks of vacation and so, it doesn't take</p> <p>11 into account that. It doesn't take into account the fact</p> <p>12 we get, I think, 11 or 12 paid holidays. So I mean, from</p> <p>13 that standpoint -- again, I'm not expecting my attorneys to</p> <p>14 complain about that, but nevertheless, it reflects 50 weeks</p> <p>15 of work, which, you know, as a state employee that's a</p> <p>16 little offensive. We don't expect other state employees to</p> <p>17 work on their weeks off or their days off, so.</p> <p>18 Q And to unpack a bit of what you said; so you</p> <p>19 pointed out that this anticipates 14 attorneys. You're</p> <p>20 referring to the column right next to area named "Rolla"</p> <p>21 that says number of attorneys 14?</p> <p>22 A Yes.</p> <p>23 Q And you said for the time period that this</p> <p>24 covers is fiscal year '17, you have hired 11 new attorneys</p> <p>25 if I heard correctly?</p>

16 (Pages 61 to 64)

<p style="text-align: right;">Page 65</p> <p>1 A In the last 18 months, I think we have hired</p> <p>2 ten new attorneys and I believe we will be hiring our</p> <p>3 eleventh hopefully soon, if we can find somebody.</p> <p>4 Q What goes into training the new attorneys that</p> <p>5 you're hired -- that you have been hiring?</p> <p>6 A Well, MSPD as a system has training for new</p> <p>7 attorneys. A week-long trial skills program that teaches</p> <p>8 the basics of how to try a case. A week-long what we call</p> <p>9 New Defender Workshop, which kinds of teaches them the</p> <p>10 basics of how to meet with the client, how to do your</p> <p>11 deposition, how to do kind of the more nuts and bolts</p> <p>12 day-to-day operations. We also do a new employee</p> <p>13 orientation, which is a day where they basically get their</p> <p>14 sexual harassment training and kind of familiarized with</p> <p>15 the -- our case management system and our HR division and</p> <p>16 that sort of thing. So a new attorney is going to spend</p> <p>17 two weeks in learning how to do litigation, a day in kind</p> <p>18 of learning, you know, not to be sexual harassing people</p> <p>19 and that sort of thing. And then we also have a</p> <p>20 requirement that the first three years of employment they</p> <p>21 go to our spring training, which is your more typical CLE</p> <p>22 training where you would have -- there is different</p> <p>23 breakout type sessions that cover different things</p> <p>24 depending on what the attorney feels they need to work on,</p> <p>25 so there is three more days. So two weeks and four days as</p>	<p style="text-align: right;">Page 67</p> <p>1 A When attorneys -- so in my office I maintain</p> <p>2 sort of an open door where I encourage attorneys to come to</p> <p>3 me with questions. So a lot of it is hey, I have got this</p> <p>4 case and we kind of walk through the case together. And</p> <p>5 throughout that process you kind of identify areas where</p> <p>6 okay you need to meet with this client in seven days and</p> <p>7 every 30 days and kind of go through what the requirements</p> <p>8 of the system are with them. That's the bulk of it. Like</p> <p>9 I said, it's kind of hands-on just walking through the</p> <p>10 cases that they have.</p> <p>11 Q Why is that important for new attorneys?</p> <p>12 A New attorneys have a great deal of difficulty</p> <p>13 issue spotting. They also have a great deal of difficulty</p> <p>14 knowing the procedure and the process. You know, law</p> <p>15 school doesn't teach you how court goes in the 25th</p> <p>16 Judicial Circuit. It may teach you civil procedure and</p> <p>17 criminal procedure, but that doesn't mean anything when you</p> <p>18 step into a courtroom. And so a lot of the questions are</p> <p>19 really basic questions about like, you know, where is court</p> <p>20 or how do I get to the jail or what's the pass code to get</p> <p>21 back in chambers to talk to the judge. I mean, it's that</p> <p>22 basic with these new attorneys. And then as, you know,</p> <p>23 usually, you know, that first year the questions start to</p> <p>24 get more advanced and we start to work on case specific,</p> <p>25 suppression issues and things like that and then we start</p>
<p style="text-align: right;">Page 66</p> <p>1 a system.</p> <p>2 Q What about the training that you do in your</p> <p>3 office?</p> <p>4 A The training that we do is really more</p> <p>5 hands-on. I mean, we used -- we have tried several times</p> <p>6 to implement more in-house training but getting people to</p> <p>7 find time to do that is almost impossible. We have done</p> <p>8 some and, you know, I usually will sit down with the new</p> <p>9 attorneys and go through some of the basics with them. We</p> <p>10 try to pair new attorneys with more senior attorneys, but</p> <p>11 that is beginning to fail because a senior attorney in my</p> <p>12 office is someone with maybe a year experience. It's</p> <p>13 basically it's the last person remaining, not so much the</p> <p>14 most experienced attorney. So I have several attorneys who</p> <p>15 are training new attorneys who have less than a year</p> <p>16 experience, but it's hands-on in my office.</p> <p>17 Q And could you remind me roughly what</p> <p>18 percentage of your time is spent training or supervising</p> <p>19 new attorneys?</p> <p>20 A I think I said somewhere between -- I can't</p> <p>21 remember, either 40, 50, 60, 70. The more I think about</p> <p>22 it, the more I think is more time really. It's the bulk of</p> <p>23 my time is spent with new attorneys.</p> <p>24 Q What do you do to train and supervise new</p> <p>25 attorneys?</p>	<p style="text-align: right;">Page 68</p> <p>1 over because they leave.</p> <p>2 Q Does your existing caseload impact your</p> <p>3 ability to mentor and supervise other attorneys in your</p> <p>4 office?</p> <p>5 A It does. I mean, that's the difficulty trying</p> <p>6 to find the balance. What time do I spend on my cases</p> <p>7 versus what time do I spend on theirs. And so when I'm in</p> <p>8 the office I try to make myself available to help the new</p> <p>9 attorneys because my goal is to get them trained and get</p> <p>10 them where they can be independent because that's going to</p> <p>11 be the most value to me. What that means though is that</p> <p>12 I'm spending more time outside typical office hours working</p> <p>13 on my own cases.</p> <p>14 Q You mentioned you have hired a lot of new</p> <p>15 attorneys recently. Is that typical in your experience?</p> <p>16 A I think MSPD has always had high turnover. My</p> <p>17 office has gotten progressively worse and the pools of</p> <p>18 candidates have gotten worse. So now it's not only do we</p> <p>19 have the high turnover, but the candidates we are getting</p> <p>20 are not as good.</p> <p>21 Q Why do you think that turnover has gotten</p> <p>22 higher?</p> <p>23 A I think the recession had a great impact on</p> <p>24 the quality of candidates and the amount of time they stick</p> <p>25 around, but that no longer is an issue so we have seen</p>

17 (Pages 65 to 68)

<p style="text-align: right;">Page 69</p> <p>1 people getting hired out more frequently. I think there is 2 also maybe fewer graduates. I don't know what the issue 3 is, but we have a high turnover. And in addition, the 4 prosecutor's offices, they continue to grow and so I train 5 attorneys to go become prosecutor's. Not intentionally, 6 but that's the effect.</p> <p>7 Q So attorneys from your office have left to 8 join the prosecutors office?</p> <p>9 A Yes.</p> <p>10 Q Why were their reasons for leaving and join 11 the prosecutors office?</p> <p>12 A Well, the one that's leaving at the end of the 13 week is becoming a prosecutor. He is leaving because he is 14 tired -- this is what he told me yesterday -- he is tired 15 of taking the cases home with him at night. He didn't mean 16 working on them at night; he meant the fact that he knew he 17 had a client sitting in jail that he hadn't seen who is 18 just kind of wasting away in jail. It wears on these new 19 attorneys. Well, it wears on every attorney I think when 20 you know that you have clients. You have people because 21 these aren't just cases, these aren't just numbers, these 22 are people. When you can't do the things to help them that 23 you know you should be able to do, I think that really 24 wears people down over time and you get burned out. That's 25 what he tells me. I believe him. I think a lot of the</p>	<p style="text-align: right;">Page 71</p> <p>1 attorney left after in court the judge -- he asked for a 2 continuance. The judge said no, I'm not giving it to you. 3 You're never ready. He said that in open court. And so 4 that was kind of the last straw for that attorney that he 5 was berated in court and told he was never ready, when it's 6 true, but it's not his fault. So he put in his notice 7 three weeks later when he became a prosecutor and he loves 8 his job now.</p> <p>9 Q In your opinion, how many more attorneys would 10 you need to bring caseloads down to levels where you could 11 adequately represent your clients?</p> <p>12 A It a difficult question to answer because I 13 have never been in a system where we had adequate 14 attorneys. So I think my judgment is colored by the fact 15 that, you know, when I started I had 200 cases and I 16 handled them or I thought I handled them well it turns out 17 that's probably not true. So what do you go off of? There 18 is the RubinBrown Missouri Project, there is the NACS 19 standards, there is my own personal views. I will say 20 this, I think realistically if I'm going to do the things 21 that I want to do, if I'm going to meet the guidelines I 22 would need double.</p> <p>23 Q How many additional investigators would you 24 need to support your attorneys in being able to effectively 25 represent their clients?</p>
<p style="text-align: right;">Page 70</p> <p>1 people that we hire are passionate about this. They really 2 do believe there is injustice and they want to help the 3 clients. There is other realities too though. He is 4 leaving the job with us where he's making \$39,000.00 a year 5 and he's going to get paid \$45,000.00 a year, at least I 6 believe. He's also going to have freedom. He can control 7 his caseload. He can't control it with us. He's also 8 going to get respect. So he's going to be able to, you 9 know, get respect from not only the judges and other 10 prosecutors but the people in the community because nobody 11 likes a public defender. So I think all those things kind 12 of come together and it's very difficult to want to do this 13 job long-term when nobody has any respect for what you do. 14 You don't get paid very well for what you do and you lose 15 that fire that you had when you were in law school about 16 wanting to help people or fight injustice or, you know, 17 defend the Constitution or whatever it was that motivated 18 you to become a public defender in the first place.</p> <p>19 Q Would you say the reasons that this attorney 20 gave you or that you think may have motivated him are 21 particular to him or do they apply to other attorneys who 22 have left your office recently? Let me ask it in a more 23 basic way: What have other attorneys told you are the 24 reasons for why they have left the office?</p> <p>25 A It's almost universally the same. One</p>	<p style="text-align: right;">Page 72</p> <p>1 A I currently have two. Again, it's hard to say 2 because if my attorneys were able to do more and get more 3 invested in their case and do more work, they would 4 certainly be requesting more. Right now, my investigators 5 only have time to serve subpoenas. So I would say we would 6 need at least double, so four, but probably more than that. 7 But again, it's hard to know.</p> <p>8 Q How do you supervise your new attorneys as 9 they manage their ongoing cases?</p> <p>10 A So we track caseload through our internal 11 database called Lotus Notes. That's the predominate way 12 that I would keep an eye on their caseload because it lists 13 it out for me. I also have regular conversations with the 14 attorneys to determine, you know, are they comfortable with 15 where they are at, do they think they can handle more. 16 This has been a more recent development based on the 17 waitlisting. Prior to that, it was just as the cases came 18 into your county, you take them and, you know, their 19 caseload may be 200 cases, it may be 100. It just depends.</p> <p>20 Q So let's turn to how things have changed 21 recently. Are you familiar with the Hinkebein decision?</p> <p>22 A I am.</p> <p>23 Q What is your understanding of what happened in 24 that case?</p> <p>25 A My understanding is that Mr. Hinkebein, he was</p>

18 (Pages 69 to 72)

<p style="text-align: right;">Page 73</p> <p>1 being sanctioned -- or that the Office of Chief 2 Disciplinary Council was moving to sanction him because he 3 was unable to meet the requirements that were set forth in 4 his particular case. I don't remember the exact details of 5 what it is was, but I think he missed some deadlines and 6 filings or something to that effect. And that the OCDC had 7 decided to file a complaint against him and that he was 8 eventually sanctioned by the Supreme Court and put on 9 probation. The defense in that case was that he had cancer 10 or that he had a medical condition and that he had a 11 caseload that was far in excessive of any reasonably 12 caseload and that he believed he would be fired if he 13 didn't handle it. So that's kind of my general 14 understanding. I have listened to the oral arguments. But 15 beyond that, I don't know Mr. Hinkebein personally. I 16 don't know any of the parties.</p> <p>17 Q Did that decision have an impact on attorneys 18 in your office?</p> <p>19 A Yes.</p> <p>20 Q What was that impact?</p> <p>21 A Well, in terms of myself and my deputy, it 22 made our job miserable. Before that, you know, we got by. 23 But we thought we were -- we thought at a minimum, you 24 know, we thought Strickland v. Washington was the standard. 25 We thought we were at least meeting that standard that, you</p>	<p style="text-align: right;">Page 75</p> <p>1 certainly think it's impacted their decision at least in a 2 couple of instances.</p> <p>3 Q When you said that you'd previously been 4 viewing it through the Strickland standard; in your opinion 5 what was the Strickland standard prior to Hinkebein? I'm 6 not trying to put you on the spot.</p> <p>7 A I think the idea in Strickland is that you do 8 some basic things. I don't remember the opinion verbatim. 9 I don't have that kind of memory. My understanding 10 basically was like, look, if you're going to represent 11 someone, you meet with them. You get discovery before you 12 plead them and you review that discovery. You do some 13 basic things that we expect attorneys to do in every case. 14 But I never viewed it as something where, okay, if I can't 15 get to this client today because I have client "x" because 16 of client "y" that that was an issue. It was just what we 17 had to do. Ultimately, you know, we would do the bear 18 minimum, get the discovery and meet with the client. So 19 that was kind of my view of Strickland.</p> <p>20 Q So in your view, Hinkebein, by focusing on the 21 ethical rules, brought into view things like conflicts of 22 interest between existing clients; is that fair to say?</p> <p>23 A Well, not only that, it brought in, you know, 24 I think we always try to be -- we always tried to meet the 25 diligence, communication, and that sort of thing. The</p>
<p style="text-align: right;">Page 74</p> <p>1 know, we were providing -- if we did that, we were 2 providing ethical representation even though it wasn't the 3 representation we thought clients deserved. When Hinkebein 4 happened, we realized that there was this gap between what 5 is ineffective assistance of counsel and ethical 6 representation and that Strickland is ineffective 7 assistance of counsel, but you can still be unethically 8 representing your clients if you're following that 9 standard. So we realized all along we have been unethical. 10 That's what Hinkebein told us that we were unethical 11 attorneys because of the conflicts of interest that we had 12 between our clients when we took on additional clients. So 13 that was very -- that was an eyeopener I should say. It 14 brought to attention the problem in a different light. And 15 it was kind of scary in the sense that, you know, with 16 Hinkebein they looked back I think three or four years and 17 how many clients had I represented in, you know, the last 18 three or four years, hundreds, and what have I messed up. 19 So it really bothered us because it also said in the 20 ethical rules that as a supervisor, I have a responsibility 21 to the people I supervise to ensure their caseloads are 22 maintained in an ethical manner. That's why we started 23 waitlisting. I know of attorneys who have decided 24 Hinkebein is kind of the last straw who have left. I can't 25 say anybody in my office has left for that reason, but I</p>	<p style="text-align: right;">Page 76</p> <p>1 rules for Missouri Supreme Court Rules IV says you have to 2 do. But it was always kind of like -- at least in my 3 mind -- there was always some understanding, we'll we're 4 public defenders so there is going to be some leeway given 5 because everybody understands that we are overworked. That 6 we have too many cases and that if they didn't feel that 7 way, then something would change. But when Hinkebein came 8 along, they said you have too many cases and you have to be 9 proactive in doing something about it or you'll lose your 10 job. So that -- that's what really brought to attention 11 those ethical rules that said look these aren't just 12 aspirational. These apply to public defenders too. So we 13 have a duty of diligence, which means we have to be prompt. 14 We have a duty of communication, which I think our 15 guidelines are ridiculous in that regard. You have to meet 16 with a client within seven days if they are in custody, you 17 know, and every 30 days thereafter. That's not the 18 representation I would want for myself, but that's our 19 guideline.</p> <p>20 Q You would want more communication than that?</p> <p>21 A I would certainly want more than that. The 22 idea that I could be sitting in jail for seven days and not 23 be -- not see an attorney, that's crazy. That's absolutely 24 crazy, but that's what we have accepted as okay. In my 25 office, it's probably rare that we get -- that we meet that</p>

19 (Pages 73 to 76)

<p style="text-align: right;">Page 77</p> <p>1 deadline. I mean, I think all the attorneys try really</p> <p>2 hard to be diligent in that respect and to communicate with</p> <p>3 their clients as best they can. But, again, it's not just</p> <p>4 possible with the number of clients that we have. And then</p> <p>5 the other issue that's come up as a supervisor as I have to</p> <p>6 look at competency. Are my attorneys competent. I can't</p> <p>7 give a brand new attorney a murder first unless I really</p> <p>8 hover over them and supervise them. And so we have a huge</p> <p>9 problem in my office of competency. You know, I have a</p> <p>10 bunch of new attorneys who don't know what they are doing.</p> <p>11 And so as their supervisor, I have to manage their caseload</p> <p>12 appropriately and make sure that they are doing the things</p> <p>13 that that case requires.</p> <p>14 Q Did any attorneys in your office talk to you</p> <p>15 about the Hinkebein decision or how it affected their</p> <p>16 ability to do their jobs?</p> <p>17 A I met with every attorney in my office after</p> <p>18 the Hinkebein decision to talk with them about their</p> <p>19 caseload and every one of them indicated that they could</p> <p>20 not ethically handle the caseload they had.</p> <p>21 Q What did you do after meeting with the</p> <p>22 attorneys in your office about Hinkebein?</p> <p>23 A That's when I began a waitlist. So I sent an</p> <p>24 e-mail to all the judges basically stating that because of</p> <p>25 our workload, because of the fact that my attorneys can't</p>	<p style="text-align: right;">Page 79</p> <p>1 that had each county and the judge and had different</p> <p>2 columns for what information we thought was pertinent for</p> <p>3 the judges to have. We would send that out on a daily</p> <p>4 basis just to let the courts and the prosecutors know these</p> <p>5 are the people that have applied. These are the people</p> <p>6 that qualify and this is where they are at on our waitlist.</p> <p>7 Q How many people are on that waitlist?</p> <p>8 A Currently?</p> <p>9 Q Currently.</p> <p>10 A I don't know currently off the top of my head.</p> <p>11 Last time I looked it was over 200.</p> <p>12 Q Since you began the waitlist has that number</p> <p>13 grown, stayed steady or dropped?</p> <p>14 A Well, the waitlist started with zero. We did</p> <p>15 not add anybody to it who we already represented. So, you</p> <p>16 know, as of September 29 or maybe probably really</p> <p>17 October 1, I don't remember the first day we would have</p> <p>18 actually sent it out, you know, there would have been two</p> <p>19 or three people. It's just continually grown. Cases have</p> <p>20 come off. So as I have regular meetings with the attorneys</p> <p>21 and as they inform me that they are able to take more cases</p> <p>22 and as I review their caseload and as I believe they are</p> <p>23 able to take more cases, I assign cases to them. I may be</p> <p>24 getting beyond the scope of your question, so if you want</p> <p>25 me to continue I will, but --</p>
<p style="text-align: right;">Page 78</p> <p>1 ethically represent the clients that they have, I'm going</p> <p>2 to be begin waitlisting clients. We are not going to</p> <p>3 refuse them, but we are only going to be able to handle the</p> <p>4 ones that we can at any given time and still be following</p> <p>5 the rules of professional conduct.</p> <p>6 Q I'm going to hand you a document that we're</p> <p>7 going to ask the court reporter to mark Exhibit 55. Do are</p> <p>8 you recognize this document?</p> <p>9 A I do.</p> <p>10 Q What is it?</p> <p>11 A It is the letter that I sent to the judges</p> <p>12 after I met with the attorneys in my office regarding their</p> <p>13 caseload and workload.</p> <p>14 Q So you've referenced a waitlist both in this</p> <p>15 document and in your deposition testimony today. Could you</p> <p>16 explain what you mean by creating a waitlist?</p> <p>17 A So when we receive an application from a</p> <p>18 potential client, normally we would enter our appearance in</p> <p>19 that case and begin, you know, file a request for discovery</p> <p>20 or whatever work needed to be done. Once I implemented the</p> <p>21 waitlist, the way that worked was when we would receive the</p> <p>22 application we would notify the court and say we have</p> <p>23 received the application, this person either qualifies or</p> <p>24 they don't. If they qualify, they would go on our</p> <p>25 waitlist. Basically what that is we create an Excel sheet</p>	<p style="text-align: right;">Page 80</p> <p>1 Q Feel free.</p> <p>2 A So the judges throughout this process the ones</p> <p>3 that have -- there has been some judges that have given it</p> <p>4 some credibility and have kind of followed it. Those</p> <p>5 judges requested that I prioritize by people in jail</p> <p>6 because I don't believe I can create a priority list. I</p> <p>7 think there is case law that suggest that I can't pick</p> <p>8 types of cases. The judges ask can you please take people</p> <p>9 off the list that are in jail first; so we have done that.</p> <p>10 Some judges basically said that the waitlist was in</p> <p>11 violation of 600.062 and 600.063. Those judges have been</p> <p>12 ordering myself and the public defender system into the</p> <p>13 cases. We originally filed a writ of prohibition to the</p> <p>14 court of appeals and the Supreme Court. It was denied. It</p> <p>15 was sent back because they said we need to do 600.063. So</p> <p>16 some of the cases are not included in that 200 because they</p> <p>17 have been open to me. And that's a separate category on</p> <p>18 the waitlist. Again, I have roughly 30 or 40 cases before</p> <p>19 the waitlist; now I have 130.</p> <p>20 Q So when you testified earlier that you have</p> <p>21 130 cases on your docket, that includes cases that</p> <p>22 otherwise would have been on this waitlist but where judges</p> <p>23 have ordered you to appear over objection?</p> <p>24 A Yes.</p> <p>25 Q And have you been treating those cases</p>

20 (Pages 77 to 80)

<p style="text-align: right;">Page 81</p> <p>1 separately from the other cases on your docket?</p> <p>2 A No. Except to the extent that because the</p> <p>3 judge has specifically ordered me into them, I have</p> <p>4 prioritize them when I assign cases out because it's my</p> <p>5 interpretation that if a judge specifically orders me in a</p> <p>6 case, it must be a priority. So when new attorneys have</p> <p>7 case availability, I give them those cases first, whether</p> <p>8 they are in jail or not. In terms of handling the cases</p> <p>9 differently than the cases I had prior to this, it's kind</p> <p>10 of difficult to answer that. I don't -- I mean, I'm given</p> <p>11 deadlines by the court and court dates. So if a case is on</p> <p>12 for a hearing, I don't really have the luxury of saying</p> <p>13 well, I'm going to push it aside and just handle my</p> <p>14 original 30. The same ethical rules apply to those cases</p> <p>15 where the judge I believe has ordered me in. I think the</p> <p>16 judge is violating the rule by appointing me knowing I</p> <p>17 can't handle it, but I can't challenge it because the</p> <p>18 Supreme Court has said file 600.063.</p> <p>19 Q Before you were being ordered into these</p> <p>20 cases, you said your docket was roughly 30 cases?</p> <p>21 A It ranged between 30 and 50.</p> <p>22 Q What kinds of cases are on the waitlist?</p> <p>23 A All kinds.</p> <p>24 Q Murder cases?</p> <p>25 A I don't think there is currently a murder.</p>	<p style="text-align: right;">Page 83</p> <p>1 Q For the people who are on the waitlist, what</p> <p>2 happens to their criminal cases while they are on that</p> <p>3 waitlist?</p> <p>4 A Most of them, the judges have been passing</p> <p>5 counsel status hearings.</p> <p>6 Q Do you know of any people on the waitlist who</p> <p>7 have pleaded guilty without counsel?</p> <p>8 A I don't know any specific examples. I'm sure</p> <p>9 it's happened. A lot of the judges are reluctant to do</p> <p>10 anything with the case since they have applied for the</p> <p>11 public defender and we have indicated to the court they</p> <p>12 qualify. So the judges -- I think most judges are</p> <p>13 reluctant to do anything with them. But I know or at least</p> <p>14 I'm fairly confident that in at least a couple of</p> <p>15 circumstances people have pled guilty.</p> <p>16 Q What circumstances were those?</p> <p>17 A Well, the circumstances would be the county</p> <p>18 that they were in. So Texas County, I would guess that a</p> <p>19 number of those people who were in jail, especially on</p> <p>20 lower-level charges like misdemeanors and probably</p> <p>21 low-level felonies, the prosecutor probably got them to</p> <p>22 plead because it was probably the promise of probation.</p> <p>23 Q And you said probably because you have no</p> <p>24 personal knowledge of those cases?</p> <p>25 A Right. And I have just seen this happen in</p>
<p style="text-align: right;">Page 82</p> <p>1 There was and then the judge ordered us in.</p> <p>2 Q A, B felony case?</p> <p>3 A Yes. There are definitely A,B. They are</p> <p>4 robbery first. There are serious cases on there.</p> <p>5 Q And you said that some of the people on the</p> <p>6 waiting list are currently in custody?</p> <p>7 A Yes.</p> <p>8 Q Do you know roughly how many people?</p> <p>9 A Probably close to maybe 50 percent. In</p> <p>10 Crawford County, one of our counties that was probably the</p> <p>11 most overloaded, we created the waitlist. No cases have</p> <p>12 come off that waitlist except for two or three where the</p> <p>13 judge has specifically ordered us in. So there is a lot of</p> <p>14 people in jail in that county who are on the waitlist. So</p> <p>15 that kind of probably increases the average. The other</p> <p>16 counties we have been able to pull people out of jail and</p> <p>17 get them off the waitlist a little faster.</p> <p>18 Q Have you received any reaction from people who</p> <p>19 are on the waitlist?</p> <p>20 A Yes. I have a stack of letters of -- I would</p> <p>21 call them complaint letters, but I don't know that that's</p> <p>22 really the right word. They are saying, you know, I need</p> <p>23 an attorney or you're my attorney, how come I haven't seen</p> <p>24 you; that kind of thing. But that pile just grows, it</p> <p>25 doesn't every shrink.</p>	<p style="text-align: right;">Page 84</p> <p>1 Texas County, so I know it happens and I wouldn't be</p> <p>2 surprised if people on the waitlist. One of the weaknesses</p> <p>3 of the waitlist is that it would expect, or at least I</p> <p>4 would expect that we would go through and evaluate it from</p> <p>5 time to time to make sure that these people haven't hired</p> <p>6 counsel or pled. I haven't really had the luxury to</p> <p>7 reevaluate it. So 200 cases on the waitlist or 200 clients</p> <p>8 on the waitlist, you know, it may be slightly less because</p> <p>9 some of those people have maybe they have hired counsel or</p> <p>10 maybe they have pled, but I have no way to -- well, I have</p> <p>11 a way to do it, but I don't have the time to do it.</p> <p>12 Q How have judges in your area responded to this</p> <p>13 letter that you e-mailed them?</p> <p>14 A Well, most of them ignored it. We met with</p> <p>15 all the judges. So I sent this letter and then we then met</p> <p>16 with all of them to talk with them about it. One of them</p> <p>17 threatened or made a veiled threat of holding me in</p> <p>18 contempt. A couple of them were in agreement that</p> <p>19 something needed to be done and they actually, I think,</p> <p>20 made attempts to assist us and that would have been the</p> <p>21 42nd Judicial Circuit. So they did things like basically</p> <p>22 abided by the waitlist. They didn't order us in any cases.</p> <p>23 They made some minor attempts to appoint private counsel.</p> <p>24 But that's the exception, so.</p> <p>25 Q What do you mean when you say minor attempts</p>

<p style="text-align: right;">Page 85</p> <p>1 to appoint private counsel?</p> <p>2 A Well, if there is -- I know of at least one</p> <p>3 instance where a private attorney was in the courtroom and</p> <p>4 it was a probation matter and we had indicated this</p> <p>5 particular person was on the waitlist. The judge looks</p> <p>6 around and sees this private attorney and says to the</p> <p>7 attorney, "Welcome to court today. I'm appointing you in</p> <p>8 this case."</p> <p>9 Q Do you know who that attorney was?</p> <p>10 A Yes.</p> <p>11 Q Did they have prior criminal experience?</p> <p>12 A Yes.</p> <p>13 Q Do you have any supervision over that case</p> <p>14 that otherwise would have been assigned to the MSPD?</p> <p>15 A No.</p> <p>16 Q So I'm going to hand you another document that</p> <p>17 we'll mark -- we'll ask the court reporter to mark Exhibit</p> <p>18 56. Do you recognize this document?</p> <p>19 A I do.</p> <p>20 Q What is it?</p> <p>21 A Again, it's the correspondence I sent to the</p> <p>22 judges. I think it's -- well, at least the first two pages</p> <p>23 are the same document that was Exhibit 55, I believe.</p> <p>24 Q What about the rest of this exhibit?</p> <p>25 A This was correspondence with one of the</p>	<p style="text-align: right;">Page 87</p> <p>1 it was saying that we were violating 600.063 and 600.062.</p> <p>2 And so I think he was asking, you know, was this something</p> <p>3 going on. Were we being ordered to do this or was I doing</p> <p>4 this on my own. I said no, this is coming my attorneys and</p> <p>5 me and not Columbia.</p> <p>6 Q And by Columbia, you mean the central MSPD</p> <p>7 office?</p> <p>8 A Right.</p> <p>9 Q So your understanding is he had expressed</p> <p>10 concern that this was an order coming from the MSPD central</p> <p>11 office?</p> <p>12 A Right.</p> <p>13 Q And you were explaining to him that this was</p> <p>14 the decision your office and your attorneys had made?</p> <p>15 A Right. Because we had -- I think one of my</p> <p>16 attorneys had told him that this was coming from Columbia,</p> <p>17 and I just think they didn't understand who was actually</p> <p>18 creating the waitlist. It had nothing to do with Columbia.</p> <p>19 I didn't ask for permission. I don't even think I</p> <p>20 notified -- I probably sent them a copy of it. I don't</p> <p>21 think I said hey Jackie is it okay that I do this. I'm</p> <p>22 pretty sure I just did it.</p> <p>23 Q Do you see in here a reference to a meeting</p> <p>24 with Judge Long and Judge Hedrick?</p> <p>25 A Hedrick.</p>
<p style="text-align: right;">Page 86</p> <p>1 judges -- well, it looks like it's e-mails that I sent in</p> <p>2 regards to the waitlist and the caseload issues in general.</p> <p>3 There is an e-mail I sent to one of the prosecuting</p> <p>4 attorneys and then correspondence between one of the</p> <p>5 circuit judges and one of the attorneys who is no longer in</p> <p>6 my office.</p> <p>7 Q Let's -- I think this is how it's produced but</p> <p>8 I think as you indicated it's a few different e-mail</p> <p>9 threads. So let's start on the second to last page that's</p> <p>10 Bates Stamped and dated 39446.</p> <p>11 A Okay.</p> <p>12 Q What e-mail does this appear to be to you?</p> <p>13 A This was an email that I sent to Kevin Hillman</p> <p>14 kind of letting him -- updating him on what we were doing</p> <p>15 regarding the waitlist.</p> <p>16 Q Who is Kevin Hillman?</p> <p>17 A He is the elected prosecutor of Pulaski</p> <p>18 County.</p> <p>19 Q Why were you sending the e-mail to Kevin</p> <p>20 Hillman about the waitlist?</p> <p>21 A I think -- I'm having difficulty remembering</p> <p>22 because I had a lot of conversations. We met with Mr.</p> <p>23 Hillman and talked with him about the issue. I think at</p> <p>24 this point in time there was a document circulating amongst</p> <p>25 the prosecutors that was an objection to the waitlist and</p>	<p style="text-align: right;">Page 88</p> <p>1 Q Hedrick.</p> <p>2 A Yes.</p> <p>3 Q It says you were planning to go to meet with</p> <p>4 them. Do you know if that meeting took place?</p> <p>5 A It took place with Judge Long, not with Judge</p> <p>6 Hedrick. I don't think Judge Hedrick was available that</p> <p>7 day. He -- honestly, I don't know that we actually ever</p> <p>8 met with Judge Hedrick now that I think about it. He is</p> <p>9 the family court judge and the civil judge and he doesn't</p> <p>10 really handle criminal cases except for maybe a few change</p> <p>11 of judges. Judge Long is the main judge for criminal cases</p> <p>12 in Pulaski County. Sorry.</p> <p>13 Q No go ahead.</p> <p>14 A That meeting with Judge Long did occur.</p> <p>15 Q What happened at that meeting?</p> <p>16 A The judge in chambers acknowledged more or</p> <p>17 less that yeah, you guys got a problem. But like most</p> <p>18 judges, they are not really able to do anything about it or</p> <p>19 at least they feel like they can't and that it's our</p> <p>20 problem, not theirs. He kind of had a let's wait and see</p> <p>21 approach to the waitlist. It was a cordial meeting. One</p> <p>22 of the prosecutors was there. I don't remember if Kevin</p> <p>23 was there. I know Brice Crowley and one of the assistant</p> <p>24 prosecutors was at that meeting in chambers. We just kind</p> <p>25 of outlined where we were at and why we were there and how</p>

22 (Pages 85 to 88)

<p style="text-align: right;">Page 89</p> <p>1 we got there. This judge, Judge Long, it wasn't long</p> <p>2 before he adopted the policy of appointing me, so he's one</p> <p>3 of the judges who disregarded the waitlist.</p> <p>4 Q If you look at the prior two pages ending in</p> <p>5 Bates Stamped 44 and 45, what does this e-mail chain appear</p> <p>6 to refer to you?</p> <p>7 A This was in reference to Michael Jacobs, an</p> <p>8 attorney who was in my office at the time, but who got</p> <p>9 hired as the district defender of our Troy office. And Mr.</p> <p>10 Jacobs when he got that position, I told him that I would</p> <p>11 not be reassigning his cases to another attorney in my</p> <p>12 office because I didn't believe I had any attorney who</p> <p>13 could take those cases until we got somebody to replace</p> <p>14 him. And so this is kind of -- this was his attempt to see</p> <p>15 if he could get the judges to let him out of those cases.</p> <p>16 Judge Hickie would not let him out without another attorney</p> <p>17 entering.</p> <p>18 Q And if you turn back to Bates -- the prior</p> <p>19 page ending in Bates Stamp 43 I think that e-mail from you,</p> <p>20 does it appear that e-mail from you to Judge Hickie is also</p> <p>21 part of this e-mail chain?</p> <p>22 A Yes.</p> <p>23 Q So this e-mail says that you would be happy to</p> <p>24 meet with Judge Hickie to discuss Mr. Jacobs cases. You</p> <p>25 indicated that Judge Hickie would not allow him to simply</p>	<p style="text-align: right;">Page 91</p> <p>1 Q Why don't you try to contract out more cases</p> <p>2 given the waitlist?</p> <p>3 A I send every single case that I have been</p> <p>4 ordered to enter since I began the waitlist, I have sent a</p> <p>5 conflict form, our standard conflict form, and it's been</p> <p>6 filled in with the case information, kind of the court</p> <p>7 dates, the client. I send every one of those to Joel</p> <p>8 Elmer, our deputy director, who is in charge of contracts</p> <p>9 saying it's a conflict. Every one of those have been</p> <p>10 denied. I have -- I don't have a budget within my own</p> <p>11 office to contract out conflicts.</p> <p>12 Q When you have indicated that they have been</p> <p>13 conflicts, in what sense are they conflicts?</p> <p>14 A I may get the rule wrong, but I think it's</p> <p>15 4-1.16 or 17. In the sense that by taking that</p> <p>16 representation, that is going to take away time that I need</p> <p>17 to spend on my other clients. I can't represent them both</p> <p>18 because of the time constraints.</p> <p>19 Q You said that these request were denied. Were</p> <p>20 you given any other explanation for why they wouldn't be</p> <p>21 contracted out?</p> <p>22 A I think realistically -- well, there is a</p> <p>23 number of reasons I suspect and this would be speculation</p> <p>24 because I don't think Joel Elmer ever gave me anything more</p> <p>25 than denied. But I do know this, that you know, the</p>
<p style="text-align: right;">Page 90</p> <p>1 withdraw from those cases. So what was the result of this</p> <p>2 exchange?</p> <p>3 A Mr. Jacobs still has one or maybe two cases.</p> <p>4 When I -- after -- I could not keep Michael Jacobs in</p> <p>5 Rolla. That became very clear. I could not -- he could</p> <p>6 not keep the cases and be the district defender in Troy.</p> <p>7 It's just not logistically possible.</p> <p>8 Q How far is Troy from Rolla?</p> <p>9 A It's maybe 150-miles. It's over a two-hour</p> <p>10 drive. Michael was handling Texas County, which is another</p> <p>11 50-miles, an hour down the road. So it would be over three</p> <p>12 hours for him to go to court and meet with clients one way.</p> <p>13 What happened as a result of that is that again the judge</p> <p>14 would not let Michael out, which I was okay with because I</p> <p>15 didn't have anybody to give the cases to. But through</p> <p>16 discussions with our director, trial division director and</p> <p>17 our contract, our deputy director, Joel Elmer and Ellen</p> <p>18 Blau, they were able to find some money to provide to my</p> <p>19 office to contract out cases and so we were able to</p> <p>20 contract out about half of Michael's cases. The other half</p> <p>21 he disposed of over the course of the month or so that he</p> <p>22 knew he would be leaving. I took a few of his cases, the</p> <p>23 ones that we wouldn't be able to contract out. Then, like</p> <p>24 I said, he's left with maybe one or two cases, a murder</p> <p>25 first and a couple others. I don't remember what they are.</p>	<p style="text-align: right;">Page 92</p> <p>1 contract budget of MSPD is limited. But probably more</p> <p>2 importantly, in my geographic area, that we are have very</p> <p>3 few panel attorneys. The panel attorneys we have handle a</p> <p>4 huge caseload of ours. I don't know how many cases we</p> <p>5 contract out a year, but I would guess it's probably at</p> <p>6 least 200. My understanding that our conflict division</p> <p>7 attempts to keep these attorneys at a reasonable level.</p> <p>8 What level that is, I don't know, but they won't give them</p> <p>9 400 cases. You know, they are not going to give them ten</p> <p>10 murders. They are going to try and make sure clients</p> <p>11 receive adequate representation. I lost my train of</p> <p>12 thought.</p> <p>13 Q That's all right.</p> <p>14 A I don't remember what it was. The other thing</p> <p>15 they try to do is that, again, you have to have an attorney</p> <p>16 who is competent in handling a case and private attorneys,</p> <p>17 generally speaking, they don't have an advantage of having</p> <p>18 a system of attorneys. There is a lot of solo</p> <p>19 practitioners in our area. So for example, this murder</p> <p>20 first case that Michael Jacobs had to keep, we really</p> <p>21 wanted to contract it out. But the only attorneys that</p> <p>22 would be competent to handle it refused to take it. So</p> <p>23 even if we had \$10,000.00 to pay someone to take it,</p> <p>24 because that's that rate for a murder first, nobody wanted</p> <p>25 it. So even if theoretically, you know, we have the money,</p>

23 (Pages 89 to 92)

<p style="text-align: right;">Page 93</p> <p>1 but nobody wants to handle our cases.</p> <p>2 Q In your opinion why do you think nobody wanted</p> <p>3 to handle it?</p> <p>4 A Because of the time it takes. In fact, one of</p> <p>5 the attorneys I actually e-mailed because I thought he</p> <p>6 might be interested said he doesn't have the time to invest</p> <p>7 in it. That would it take way too much time and it would</p> <p>8 be better handled by a public defender who has the time.</p> <p>9 Q Do you think the payment schedule for conflict</p> <p>10 cases impacts the ability to refer cases out?</p> <p>11 A Well, certainly. I mean, if we were offering</p> <p>12 \$30,000.00 for a murder first, you'd probably more people</p> <p>13 would be inclined to take it, but \$10,000.00 for a murder</p> <p>14 first is kind of a joke. I mean, I wouldn't want it as a</p> <p>15 private attorney.</p> <p>16 Q Why?</p> <p>17 A That's way too much work. I mean, the fact</p> <p>18 that, you know, this person is facing potential of a death</p> <p>19 sentence, you know, that's a case where you generally</p> <p>20 probably don't want to leave any stone unturned to ensure</p> <p>21 they get the best representation possible because of the</p> <p>22 finality in the outcome. So the hours you would spend, you</p> <p>23 know, there is no limit. You know, murder first where they</p> <p>24 are none death take tons of time, probably, you know well</p> <p>25 over hundred hours easy when you take a death penalty case.</p>	<p style="text-align: right;">Page 95</p> <p>1 aggravators, if you know?</p> <p>2 A I don't know but I know I had a prosecutor on</p> <p>3 a defendant murder first case say this last week that he</p> <p>4 could file up to the day of trial.</p> <p>5 Q Do you recognize this document?</p> <p>6 A Yes.</p> <p>7 Q What is it?</p> <p>8 A It is an e-mail I sent to our trial director</p> <p>9 Ellen Blau, regarding some of my concern with how things</p> <p>10 were moving.</p> <p>11 Q Why did you send her this e-mail?</p> <p>12 A I think I already said that this job has</p> <p>13 become miserable. This was kind of in response to that to</p> <p>14 say we need resources. We need something to happen. I can</p> <p>15 only do so much. So to the extent that my office is short</p> <p>16 of resources, I'm asking Ellen Blau, or whoever above me to</p> <p>17 give me resources to address this problem. That's the same</p> <p>18 as me sending the conflict forms to Joel Elmer, the deputy</p> <p>19 director. It is an attempt to say I can't represent these</p> <p>20 people. Please give me some help. I'm really thinking in</p> <p>21 this particular case, I'm telling Ellen I'm seriously</p> <p>22 thinking of quitting. You know, figure something out so I</p> <p>23 can keep doing this work.</p> <p>24 Q Why were you seriously thinking of quitting?</p> <p>25 A Because I want to do a good job. I want to be</p>
<p style="text-align: right;">Page 94</p> <p>1 So I'm not going to take a case and get paid pennies on the</p> <p>2 dollar. So I think our capital division, I don't know but</p> <p>3 they have limits on how many they handle and I think it's</p> <p>4 six at a time or six a year or something like that. So if</p> <p>5 that's their limit, if you're a private attorney, you got</p> <p>6 to pay the bills.</p> <p>7 Q So the capital division doesn't handle</p> <p>8 necessarily every capital case in the MSPD system in your</p> <p>9 understanding?</p> <p>10 A No, they handle every capital case, but not</p> <p>11 every murder first goes capital. So every murder first has</p> <p>12 the ability if the prosecutor chooses to file aggravators</p> <p>13 and go death, they can do so. This particular case I'm</p> <p>14 talking about right now the prosecutor has not filed</p> <p>15 aggravators and has not sought the death penalty. Although</p> <p>16 yesterday he indicated he wanted this guy to get the</p> <p>17 needle, so that may change. If that changes, it will go to</p> <p>18 our capital division but right now it remains ours.</p> <p>19 Q So a case could proceed to trial without</p> <p>20 aggravators and remain with a trial division area until</p> <p>21 aggravators are filed, then it switches to the capital</p> <p>22 division?</p> <p>23 A Right. And we handle several murder first at</p> <p>24 any given time where they are none death.</p> <p>25 Q When is the latest a prosecutor can file</p>	<p style="text-align: right;">Page 96</p> <p>1 able to represent my clients. I want my attorneys to be</p> <p>2 able to represent their clients to the best of their</p> <p>3 ability. I want these clients to get their fair -- to get</p> <p>4 justice, whatever that may be. When the files continue to</p> <p>5 pile up and people continue to sit in jail and you're not</p> <p>6 doing anything about it and can't do anything about it, it</p> <p>7 leads you to start thinking about alternatives like why do</p> <p>8 I do this. Why do I continue to try to fight this</p> <p>9 injustice when nobody seems to care. Maybe I'm wrong.</p> <p>10 Maybe all that this really needs is a suit to stand up next</p> <p>11 to this person. Anyway, you begin to question why it is</p> <p>12 you do what you do and why do you put up with it everyday.</p> <p>13 I can get a job somewhere else and in fact I did start</p> <p>14 looking for other work.</p> <p>15 Q What led you to join the MSPD in the first</p> <p>16 place?</p> <p>17 A Well, like I said, I did the two internships</p> <p>18 in law school. I did the public defender internship. I</p> <p>19 did a civil internship. I certainly liked the money aspect</p> <p>20 of the civil, but I enjoy the public defender practice and</p> <p>21 I prefer rural area. So I didn't really want to live in a</p> <p>22 city. So between those two things, I really liked the idea</p> <p>23 of being a public defender.</p> <p>24 Q In this e-mail, you said, "The words of Zell</p> <p>25 Fisher ring louder to me every day." Do you recall what</p>

24 (Pages 93 to 96)

<p style="text-align: right;">Page 97</p> <p>1 you were referring to?</p> <p>2 A Yes. In the Hinkebein decision, Zell Fisher,</p> <p>3 he's on the Supreme Court. He basically said -- I never</p> <p>4 get it right, but he said something along the lines like</p> <p>5 "Sometimes you do something" -- I don't remember exactly</p> <p>6 but sometimes you take a different job and that's what I'm</p> <p>7 referring to is the take a different job. If I can't</p> <p>8 provide ethical representation; if I can't do the things</p> <p>9 that I'm required to do as a lawyer that I swore to do when</p> <p>10 I took the oath and that I just signed my bar form the</p> <p>11 other day to get my new bar card, you know, and I had to</p> <p>12 reaffirm the oath. If I can't live by that doing this job,</p> <p>13 then maybe it's time to look at taking a different job</p> <p>14 because I don't want to be suspended. I don't want to lose</p> <p>15 my license. But probably more importantly, again, I think</p> <p>16 Hinkebein opened my eyes to the fact that I haven't been</p> <p>17 providing ethical representation.</p> <p>18 Q Do you think the lawyers in your office are</p> <p>19 able to provide ethical representation?</p> <p>20 A No.</p> <p>21 Q I'm going to show you another set of e-mails</p> <p>22 I'll ask the court reporter to mark as Plaintiff's 58. If</p> <p>23 you just take a minute and review this document.</p> <p>24 A Okay.</p> <p>25 Q What does it appear to be to you?</p>	<p style="text-align: right;">Page 99</p> <p>1 waitlist. We asked him to appoint private attorneys and we</p> <p>2 asked for him to be lenient on continuances with people out</p> <p>3 of custody.</p> <p>4 Q Did he allow you to use the waitlist?</p> <p>5 A He did.</p> <p>6 Q Has he appointed private counsel in cases?</p> <p>7 A I don't believe he has. But the associate</p> <p>8 judges in the 42nd; one associate judge has and the other</p> <p>9 circuit judge has.</p> <p>10 Q Do you have an understanding of how the</p> <p>11 private bar has reacted to being appointed cases?</p> <p>12 A Well, they do not like being appointed. I</p> <p>13 have only spoken to one who was appointed and he just kind</p> <p>14 of joked about it. But also in that same conversation, he</p> <p>15 liked the waitlist because it was generating clients for</p> <p>16 him.</p> <p>17 Q Do you know roughly how many cases in your</p> <p>18 area have been referred to private attorneys that are --</p> <p>19 that would otherwise be on your waitlist?</p> <p>20 A I think two.</p> <p>21 Q And has Judge Pearson or other judges in Texas</p> <p>22 County been granting continuances to people or been more</p> <p>23 lenient with continuances, I believe is what you said?</p> <p>24 A I don't think we have got to the point where</p> <p>25 we have asked for continuances on cases that are cases that</p>
<p style="text-align: right;">Page 98</p> <p>1 A This -- back when we initiated the waitlist,</p> <p>2 we received -- or I received this response from Judge</p> <p>3 Pearson, the presiding judge in the 42nd circuit. He was</p> <p>4 very concerned that people would be sitting in jail and</p> <p>5 would not receive an attorney early enough in the process.</p> <p>6 And so he had requested that we arrange a meeting to</p> <p>7 discuss what can be done. I think Judge Pearson recognized</p> <p>8 there was a problem and was trying to find ways to address</p> <p>9 the problem and so this was the back and forth to try to</p> <p>10 get together and meet.</p> <p>11 Q Did you meet with Judge Pearson?</p> <p>12 A I did. We had a meeting with Judge Pearson</p> <p>13 and Judge Bernstein and the assistant prosecutor of</p> <p>14 Crawford County.</p> <p>15 Q How did that meeting go?</p> <p>16 A We received a muted favorable reception from</p> <p>17 the judges. Again, Judge Pearson I think he will</p> <p>18 acknowledge and he has. He has provided a 600.063 order</p> <p>19 and I think he said something along the lines like they</p> <p>20 aren't able to provide effective representation. So he</p> <p>21 acknowledges that, but he want us to provide solutions to</p> <p>22 that problem and he was asking us at the meeting what</p> <p>23 solutions do we have.</p> <p>24 Q Did you have solutions to offer him?</p> <p>25 A We did. You know, we asked him to allow us to</p>	<p style="text-align: right;">Page 100</p> <p>1 we have been appointed that were on the waitlist because we</p> <p>2 really haven't been appointed to very many cases. The 42nd</p> <p>3 Circuit, the judges there, it's a very relaxed circuit. So</p> <p>4 cases kind of sit forever. I mean, so at this point with</p> <p>5 these being brand new cases, they are probably getting set</p> <p>6 for trial a year from now. So it's not really something</p> <p>7 where you're saying we need anything continued. You know,</p> <p>8 time will tell.</p> <p>9 Q Are there judicial circuits other than the</p> <p>10 ones we have talked about through these documents that I</p> <p>11 haven't mentioned that you're responsible believe for?</p> <p>12 A The only two circuits we are responsible for</p> <p>13 are 25th and the 42nd.</p> <p>14 Q So I'm going to show you a document that's</p> <p>15 previously been marked Petsch Exhibit 5. Do you recognize</p> <p>16 this document?</p> <p>17 A I'm sure I have seen it, but I don't.</p> <p>18 Q What does it appear to be to you?</p> <p>19 A Well, it's a suggestions for a writ of</p> <p>20 prohibition that looks like it was drafted I'm guessing</p> <p>21 probably by Greg Mermelstein to be used when a court</p> <p>22 appoints us.</p> <p>23 Q You mentioned earlier that you had filed a</p> <p>24 writ to try to object to an appointment by judges in your</p> <p>25 area. Did that writ look similar to this motion or was it</p>

25 (Pages 97 to 100)

<p style="text-align: right;">Page 101</p> <p>1 different?</p> <p>2 A I'm sure it was similar. We did not receive</p> <p>3 any assistance from our offices, our main office in</p> <p>4 Columbia, in doing our writ. We did that on our own.</p> <p>5 Q And that writ was denied?</p> <p>6 A It was denied at the Court of Appeals and the</p> <p>7 Supreme Court.</p> <p>8 Q Have you filed any other writ since that writ</p> <p>9 was denied by the Supreme Court?</p> <p>10 A The Supreme Court, although they did not issue</p> <p>11 an opinion, they checked a box that said due to 600.063</p> <p>12 hearing because they did not deny it with prejudice. So</p> <p>13 they hinted at that we could re-file it after we do</p> <p>14 600.063.</p> <p>15 Q What is a 600.063 hearing?</p> <p>16 A Well, 600.063 is a statute whereby it is our</p> <p>17 remedy when we believe that we have too many cases, we are</p> <p>18 supposed to file a motion with the court to ask the court</p> <p>19 to review our caseload. Not of all of attorneys, but just</p> <p>20 of one or some for the court to determine whether or not</p> <p>21 one, we are over worked; and two, if so, what remedies.</p> <p>22 Q Have you filed any 600.063 motions?</p> <p>23 A Yes.</p> <p>24 Q How many?</p> <p>25 A Two.</p>	<p style="text-align: right;">Page 103</p> <p>1 whole lot of point in following the statute in that</p> <p>2 particular instance. So I created a waitlist. I believe</p> <p>3 it's 600.062 says we cannot refuse cases. It was never my</p> <p>4 intention to refuse representing any client; that we would</p> <p>5 represent all of them. It just meant we would represent</p> <p>6 them as an attorney was available, so that was the purpose</p> <p>7 of the waitlist. So that's why I went that route.</p> <p>8 Q I'm going to show you a document that's</p> <p>9 previously been marked Exhibit 54 -- or actually you can</p> <p>10 put that aside for one second. Finishing on 600.063; you</p> <p>11 mentioned that 600.063 doesn't apply office-wide. What was</p> <p>12 the scope of the Order that Judge Pearson entered for</p> <p>13 600.063?</p> <p>14 A It applied to -- in my mind it applies to</p> <p>15 Crawford and Dent County only and the attorneys in those</p> <p>16 counties. So I don't -- it's again, it's a difficult</p> <p>17 statute to understand and even though it's short, it's not</p> <p>18 technically difficult, but application-wise it was written</p> <p>19 by a legislature who doesn't really understand know court</p> <p>20 proceedings and how things happen. So they didn't even</p> <p>21 really tell you how to file it or, you know, do you file it</p> <p>22 in an individual case. I did it by just e-mailing the</p> <p>23 judge and said here is my motion. But I think Ruth filed</p> <p>24 it in a case and I don't know that neither way is wrong</p> <p>25 necessarily. So I don't know at this point whether it</p>
<p style="text-align: right;">Page 102</p> <p>1 Q What was the result of the filing of those</p> <p>2 motions?</p> <p>3 A I filed one in the 42nd Circuit and one in the</p> <p>4 25th Circuit. In the 42nd Circuit we had a hearing. That</p> <p>5 was with Judge Pearson. He -- I don't know if grant is the</p> <p>6 right word, but he issued an Order basically saying that</p> <p>7 yes, he believed that the attorneys that I had suggested in</p> <p>8 the motion could not handle effectively their cases and he</p> <p>9 listed out a number of remedies that mirrored the statute.</p> <p>10 Q What are those remedies?</p> <p>11 A That the judge can waitlist. That he can be</p> <p>12 lenient with continuances. That he can appoint private</p> <p>13 counsel. That he can -- those are the three I remember. I</p> <p>14 believe there is maybe six, five or six. I don't remember</p> <p>15 what the other ones are. But he basically listed those out</p> <p>16 as potential remedies.</p> <p>17 Q What happened in the other judicial circuit?</p> <p>18 A The other circuit the judge has scheduled a</p> <p>19 hearing for Wednesday of next week.</p> <p>20 Q Why did you first send the e-mail saying that</p> <p>21 you were creating a waitlist before filing a 600.063</p> <p>22 motion?</p> <p>23 A Well, as I expected, the 600.063 motion would</p> <p>24 not provide relief and it doesn't allow us to address an</p> <p>25 entire office, so it didn't really seem like there was a</p>	<p style="text-align: right;">Page 104</p> <p>1 applies only to the three attorneys that I have in Crawford</p> <p>2 and Dent County. Does it apply to the counties? I don't</p> <p>3 know. Does it apply to other attorneys if they transfer</p> <p>4 in? Time will tell.</p> <p>5 Q If you could look at Exhibit 54 now. Do you</p> <p>6 recognize this document?</p> <p>7 A I do.</p> <p>8 Q What is it?</p> <p>9 A It is a suggested motion to withdraw that was</p> <p>10 created by, I believe, Greg Mermelstein to provide some</p> <p>11 guidance should an attorney feel that they cannot meet the</p> <p>12 demands of their caseload.</p> <p>13 Q Why would an attorney in the MSPD use this</p> <p>14 document?</p> <p>15 A Well, because I think probably every attorney</p> <p>16 in MSPD has an excessive caseload and probably should be</p> <p>17 moving to withdraw on cases because they are unable to</p> <p>18 provide ethical representation.</p> <p>19 Q Have any attorneys in your area moved to</p> <p>20 withdraw from existing cases?</p> <p>21 A One has.</p> <p>22 Q Who is that?</p> <p>23 A Me. I actually filed this -- I believe this</p> <p>24 motion. It's a lot of work. I spent a lot of time putting</p> <p>25 it together and it was summarily denied.</p>

26 (Pages 101 to 104)

<p style="text-align: right;">Page 105</p> <p>1 Q There was no hearing over the motion?</p> <p>2 A The court called it up and I said, "Judge, I</p> <p>3 filed a motion." You know, we had a little discussion on</p> <p>4 it, but that was -- that was it.</p> <p>5 Q Do you know of any other MSPD attorneys that</p> <p>6 have filed similar motions?</p> <p>7 A No one in my office I believe has filed this</p> <p>8 motion.</p> <p>9 Q Do you know what the Missouri Coalition for</p> <p>10 the Right to Counsel is?</p> <p>11 A I do not.</p> <p>12 Q Are you aware of any pro bono programs that</p> <p>13 have been created to take criminal cases that would</p> <p>14 otherwise be handled by the MSPD?</p> <p>15 A Yes. It may be that, I just don't remember</p> <p>16 the name. My understanding is that in St. Louis and Kansas</p> <p>17 City that some of the law firms there have agreed to take</p> <p>18 cases to help train their young attorneys in litigation.</p> <p>19 Q But those programs are limited to, in your</p> <p>20 understanding, Kansas City and St. Louis?</p> <p>21 A I don't think they are limited to that but in</p> <p>22 rural Missouri there are not law firms that have excess</p> <p>23 capability, I think, to take on cases like that pro bono.</p> <p>24 Q So there are no, as far as you're aware, pro</p> <p>25 bono programs or representation in counties that your area</p>	<p style="text-align: right;">Page 107</p> <p>1 your office to provide effective representation?</p> <p>2 A Yes.</p> <p>3 Q How?</p> <p>4 A Well, ideally, a client would have I think</p> <p>5 horizontal -- or vertical representation. So they have the</p> <p>6 same attorney from the date that, you know, they are</p> <p>7 charged when they first get their attorney through trial or</p> <p>8 plea. I think that goes -- that's for a whole host of</p> <p>9 reasons that I have already talked about like, you know,</p> <p>10 developing trust, understanding the case, you know, what</p> <p>11 discovery is needed, what experts are needed, why certain</p> <p>12 things have happened. You know, the memory that you get</p> <p>13 from doing a preliminary hearing or something just knowing</p> <p>14 whether a witness is credible or not. There is a whole</p> <p>15 host of things. Every time you transfer a new attorney</p> <p>16 into the case, that's lost and they don't have that same</p> <p>17 frame of reference that the other attorney had. And so you</p> <p>18 lose that every time and I think you just lose more and</p> <p>19 more every time you change attorneys. But also the</p> <p>20 client's right. I mean, the clients have a right to a</p> <p>21 speedy trial. And, you know, even if we are not asserting</p> <p>22 it, the idea that most clients that I have, you know, if</p> <p>23 they are in custody will be custody if they go to trial for</p> <p>24 a year or more, awaiting trial is in large part of a</p> <p>25 function of the fact that they have gone through four or</p>
<p style="text-align: right;">Page 106</p> <p>1 covers?</p> <p>2 A There are certainly no programs.</p> <p>3 Q We talked earlier about the high rate of</p> <p>4 turnover in your office. What kinds of problems are caused</p> <p>5 by high turnover rate?</p> <p>6 A Clients go through multiple attorneys. Every</p> <p>7 time an attorney gets a case, they have to get up to speed</p> <p>8 on a case and that takes a lot of time. So cases take much</p> <p>9 longer than they should to get to some disposition. It</p> <p>10 creates training problems. I mean, the biggest impact of</p> <p>11 the constant turnover is that, you know, it's a huge time</p> <p>12 waste to get attorneys up to speed. And then the other</p> <p>13 issue is when I'm hiring attorneys, I lose, you know, a day</p> <p>14 every time I have to do interviews.</p> <p>15 Q How are cases transitioned when someone leaves</p> <p>16 the office?</p> <p>17 A Traditionally, when somebody would leave the</p> <p>18 office, typically at that point they are handling more</p> <p>19 serious cases. So those cases would probably have to be</p> <p>20 given to an experienced attorney, the higher level</p> <p>21 felonies. So you would shift the caseload. So the person</p> <p>22 leaving cases would then go to next most senior attorney</p> <p>23 and that attorney would then shift their cases to the</p> <p>24 incoming attorney.</p> <p>25 Q Does that affect the ability of attorneys in</p>	<p style="text-align: right;">Page 108</p> <p>1 five different attorneys by the time it gets to trial. And</p> <p>2 the only reason it's getting to trial is because now it's</p> <p>3 my case because the judge refuses to grant any further</p> <p>4 continuances and I cannot give it to a brand new attorney.</p> <p>5 Q You said four or five attorneys for a single</p> <p>6 case; how common is it for a case in your office to be</p> <p>7 transferred to four or five attorneys over the life of the</p> <p>8 case?</p> <p>9 A On the more serious cases, that's probably the</p> <p>10 norm. On the -- misdemeanor or C, D, E felonies that don't</p> <p>11 take a year. You know, if it's a case that only takes six</p> <p>12 months, you're probably going to have the same attorney.</p> <p>13 You know, you might go through two attorneys. But on like,</p> <p>14 you know, murder, rape, unclassified felonies, you are</p> <p>15 going to have four or five until it gets to me.</p> <p>16 Q How long does it take you to fill a position</p> <p>17 after somebody leaves your office?</p> <p>18 A Historically it would take a month to a</p> <p>19 month-and-a-half. Right now we have an opening. I had</p> <p>20 four applicants that were qualified. And when I say</p> <p>21 qualified, it used to mean that they at least had a</p> <p>22 license. Now qualified means that they are capable of</p> <p>23 getting a license.</p> <p>24 Q By capable of getting a license, do you mean</p> <p>25 they are recent law school graduates who haven't passed the</p>

27 (Pages 105 to 108)

<p style="text-align: right;">Page 109</p> <p>1 bar yet?</p> <p>2 A The last person I hired, he had a license out</p> <p>3 of Oklahoma, so he had to get a temporary license and he</p> <p>4 has to take the bar in February. The two people prior to</p> <p>5 that were Rule 13. So they were law clerks in my office</p> <p>6 until they -- and I hired them in August. So they were</p> <p>7 basically practicing under my supervision up until October</p> <p>8 when they got their results.</p> <p>9 Q And in terms of the available attorney</p> <p>10 positions that you have to fill, did those attorneys still</p> <p>11 count against those slots even though they were unable to</p> <p>12 practice --</p> <p>13 A Yes.</p> <p>14 Q -- by themselves?</p> <p>15 A Yes.</p> <p>16 MR. SHAHABIAN: I think now is a good time for</p> <p>17 a break. Go off the record.</p> <p>18 THE VIDEOGRAPHER: Going off the record. The</p> <p>19 time is 4:25 p.m. This ends Media 2.</p> <p>20 (A recess was taken.)</p> <p>21 THE VIDEOGRAPHER: Going back on the record.</p> <p>22 The time is 4:34 p.m. This beings Media 3.</p> <p>23 Q (By Mr. Shahabian) Thank you for sticking</p> <p>24 around, Mr. Crowell.</p> <p>25 A You're welcome.</p>	<p style="text-align: right;">Page 111</p> <p>1 would basically be that we entered the case because they</p> <p>2 met our qualifications. What this is saying is that we</p> <p>3 denied them for some reason and so we had a determination</p> <p>4 made by the judge that we needed to enter the case.</p> <p>5 Q So these are cases where your office denied an</p> <p>6 indigency determination, but over your denial the judge</p> <p>7 independently determined the defendant to be indigent and</p> <p>8 appointed the MSPD to represent them?</p> <p>9 A Yes.</p> <p>10 Q And if you turn to the first page ending in</p> <p>11 Bates Stamp 58. Do you see the e-mail from Chad Picker?</p> <p>12 A Yes, I do.</p> <p>13 Q He says, "Ellen, it is part of the HB215</p> <p>14 agreement with the judges to help with our caseload. If</p> <p>15 the indigent PV and misdemeanor cases cannot be resolved</p> <p>16 with the PA, judge, and defendant we are appointed." Do</p> <p>17 you have an understanding of what he's referring to in this</p> <p>18 e-mail?</p> <p>19 A I do.</p> <p>20 Q Could you explain what your understanding is?</p> <p>21 A So I don't remember the year, but I believe it</p> <p>22 was sometime after the Waters decision. The legislature</p> <p>23 came out with House Bill 215, which basically kind of</p> <p>24 clarified the cases we could enter. Chad and I met with</p> <p>25 the judges and it was agreed that we would only enter into</p>
<p style="text-align: right;">Page 110</p> <p>1 Q I wanted to just touch on a few -- we are</p> <p>2 going to jump a little bit and clean up a few random</p> <p>3 things. So I want to show you a document that I will ask</p> <p>4 our court reporter to mark Plaintiff's 59. Do you</p> <p>5 recognize this document?</p> <p>6 A I can see that I received it at some point,</p> <p>7 but I don't have an independent recollection of it.</p> <p>8 Q What does it appear to be to you?</p> <p>9 A An e-mail chain between Chad Picker, who would</p> <p>10 have been the district defender of my office at that and I</p> <p>11 would have been the deputy district defender, regarding</p> <p>12 judges appointing us.</p> <p>13 Q And if you look on the second page of the</p> <p>14 document ending in Bates Stamp 59, do you see there is an</p> <p>15 e-mail from Ellen Blau that asks you to look at a</p> <p>16 spreadsheet and explain why the numbers of cases coded as</p> <p>17 judge determining indigency are above average in your area</p> <p>18 as compared to the rest of the MSPD?</p> <p>19 A Yes, I see that.</p> <p>20 Q What does she mean -- do you know what she</p> <p>21 means by a case coded as the judge determining indigency?</p> <p>22 A Yes. So whenever -- whenever we receive an</p> <p>23 application we make a determination of whether or not they</p> <p>24 qualify for our services. If they qualify, it would be</p> <p>25 coded as -- I'm not sure what it would be coded as, but it</p>	<p style="text-align: right;">Page 112</p> <p>1 misdemeanors or probation violations if we were</p> <p>2 specifically ordered into the issue. So a lot of the cases</p> <p>3 probably why our numbers looked higher than the rest of the</p> <p>4 state was because of that agreement that the judges made</p> <p>5 with us.</p> <p>6 Q Do you know what Mr. Picker is referring to</p> <p>7 when he says "if the indigent PV and misdemeanor cases</p> <p>8 cannot be resolved with the PA, judge, and defendant"?</p> <p>9 A Yes. What that refers to is in a misdemeanor</p> <p>10 or probation violation, that's what PV means, it's expected</p> <p>11 in the 25th and 42nd circuit that prior to appointment of</p> <p>12 public defender in a case, that the judge -- well, that the</p> <p>13 prosecutor is going to meet with the defendant and say here</p> <p>14 is my offer in your case. So, for example, let's say it's</p> <p>15 a misdemeanor DWI. The prosecutor would meet the with the</p> <p>16 defendant and say my offer to you is a suspended imposition</p> <p>17 of sentence, you know, if you want it, you can take it; if</p> <p>18 you don't, you know, whatever. So if they agree, if the</p> <p>19 defendant takes that offer, then he would plead and that</p> <p>20 would be the end of it. If the defendant doesn't plead or</p> <p>21 does not want the offer, then the judge would consider</p> <p>22 whether or not he needs to appoint us, assuming they</p> <p>23 qualify.</p> <p>24 Q Was jail time a possibility in these cases?</p> <p>25 A Yes.</p>

28 (Pages 109 to 112)

<p style="text-align: right;">Page 113</p> <p>1 Q And so to be clear, at this point prosecutors 2 would meet with defendants who potentially qualified for 3 MSPD representation but had not been appointed counsel? 4 A Right. 5 Q In your understanding, were those meetings -- 6 in those meetings, did the defendants have other counsel? 7 A They would not have had counsel. 8 Q So they would meet with the prosecutors pro 9 se? 10 A Yes. 11 Q And they would be offered sentences -- deals 12 on charges that potentially implicated jail time? 13 A Yes. 14 Q Do you know if the deals offered included jail 15 time as a possibility? 16 A I would say most of them had jail time as a 17 possibility. 18 Q What kinds of sentences -- sentences would be 19 imposed in those cases? 20 A I think generally speaking these agreements 21 that are made and are still done on these misdemeanors 22 cases are SIS probations and SES probations. So the 23 defendant, if they accept the offer, they're going to be 24 placed on probation. So jail time is a possibility, but 25 only if they violate the probation. So that's what I think</p>	<p style="text-align: right;">Page 115</p> <p>1 defendant wanted to accept that offer and the judge refused 2 it because he wanted the person to be represented so and he 3 ordered me in case. 4 Q So these kind -- these agreements are still in 5 effect today? 6 A Yes. Well, in most of my counties. We 7 stopped doing it in Texas County because the judge there 8 routinely violated the spirit of the agreement, which was 9 that they would not seek jail time, and the judge routinely 10 gives very lengthy jail sentences. So we just said, you 11 know, don't feel -- we're not comfortable with that 12 anymore. 13 Q I'm not sure I understand. Could you explain 14 how the judge would impose jail sentences in these cases 15 where the negotiations involved probation or the idea of no 16 jail time? 17 A So obviously the judge does not have to accept 18 any agreed-to disposition between a prosecutor and a 19 defendant. The prosecutor in Texas County, he would say 20 I'm offering you probation. Let's say the DWI example; the 21 defendant is like I will take it. And so he pleads and the 22 judge says okay, that's great. I know you want probation, 23 but I'm not inclined to do that. So do you want to 24 proceed? And, you know, often because these people aren't 25 represented, they don't understand as the judge, as he's</p>
<p style="text-align: right;">Page 114</p> <p>1 most of these were. Now, it does happen where a person 2 maybe is in custody and the prosecutor said my offer is ten 3 days, credit for time served or ten days or whatever, and 4 the defendant may choose to take that. In the probation 5 violation cases, those are misdemeanors and felonies. So 6 the prosecutor would tell the defendant what their offer is 7 for them to admit it, to the violation. And if the 8 defendant wants it, then same sort of scenario, but 9 obviously at that point since it's a probation violation, 10 we are not talking fine only probation. That doesn't 11 happen, at least not that I have ever seen. So we are 12 always talking jail or prison time. 13 Q And it's only if the defendant doesn't agree 14 to whatever the plea offer is that your office would be 15 appointed in those cases? 16 A In most of those cases. 17 Q In what cases would you not be appointed? 18 A Sometimes judges, rightfully so, don't feel 19 comfortable with this arrangement. It's usually on 20 felonies and so they just kind of do away with this 21 agreement, this kind of loose agreement. They say I'm 22 appointing the public defender assuming we have already 23 notified the court that they qualify. To give you an 24 example, I had email yesterday where the prosecutor had 25 offered an individual probation. The client or the</p>	<p style="text-align: right;">Page 116</p> <p>1 smiling at them telling them telling them do you want to 2 proceed, they think he's going to be lenient and he gives 3 them a six-month sentence in jail. So that happened once 4 or twice and we realized, okay, this is not what we had 5 intended. So in Texas County, we -- because it's clear 6 that the judge is seeking jail time even if the prosecutor 7 is not, we just enter the cases. 8 Q Why did your office enter into these 9 agreements? 10 A I think at the time it was our belief that 11 that's what House Bill 215 required. We had hoped that it 12 would reduce caseload and so that we could focus on the 13 more serious cases, the felonies. This rule, although it's 14 still in effect, it really only applies anymore to the 15 probation violations. In a couple counties, some 16 misdemeanors still kind of go along this way. But for the 17 most part because everybody was violating it and people 18 were going to jail, it became quite clear that 19 constitutional rights were being violated and we decided 20 that I think the courts basically decided that we need 21 attorneys in these cases. Because nobody wants to say that 22 jail time is off the table except for us; we would be okay 23 with that, but none of the parties that matter in this 24 situation. 25 Q What were the downsides -- and I think you</p>

<p style="text-align: right;">Page 117</p> <p>1 mentioned some of them already -- but what were the</p> <p>2 downsides for defendants who were charged with the kinds of</p> <p>3 cases that were implicated by this agreement?</p> <p>4 A I think probably one of the biggest</p> <p>5 downside -- I mean, I think a lot of times prosecutors</p> <p>6 really were trying to be fair and give the offer that they</p> <p>7 would have given regardless. But I know of situations</p> <p>8 where it doesn't really matter if the offer is what the</p> <p>9 offer would have been to the attorney if there is a</p> <p>10 suppression issue. If there is some other mitigation that</p> <p>11 the prosecutor should be aware of, especially with the</p> <p>12 younger or the mentally challenged clients. So there is</p> <p>13 some serious disadvantages to this policy of allowing</p> <p>14 defendants to plead in misdemeanors, or any case without an</p> <p>15 attorney, to advise them of their rights and advise them of</p> <p>16 collateral consequences. A lot of people pled guilty to</p> <p>17 those cases and, you know, you see them today and, like,</p> <p>18 maybe it's a marijuana charge and that's impacted them</p> <p>19 somehow. In my little neck of the woods, maybe they pled</p> <p>20 to a misdemeanor domestic assault and they go to get their</p> <p>21 hunting permit and they can no longer own a firearm or</p> <p>22 possess a firearm, so they can't hunt. They may not seem</p> <p>23 like a big deal to someone who lives in a city, but in</p> <p>24 rural Missouri, that's huge. That's huge. So, you know,</p> <p>25 there are collateral consequences even with misdemeanors</p>	<p style="text-align: right;">Page 119</p> <p>1 Q APD I would be a first-year attorney?</p> <p>2 A Yes.</p> <p>3 Q Do you have any understanding of why a judge</p> <p>4 would appoint someone other than you into these cases?</p> <p>5 A I have a hunch.</p> <p>6 Q What is your hunch?</p> <p>7 A So yesterday I got an e-mail from the</p> <p>8 prosecuting attorney of Pulaski County saying the jail was</p> <p>9 rioting. And I think he was -- not literally, but the</p> <p>10 people in jail were getting upset because they did not have</p> <p>11 attorneys or attorneys had not entered their case, or maybe</p> <p>12 I'm in their case and I haven't been by to see them because</p> <p>13 I have too many cases. And so the -- I think he was very</p> <p>14 concerned about the situation in jail and the sheriff had</p> <p>15 contacted the prosecutor and said we have to do something</p> <p>16 about the people in jail. So the prosecutor told me that</p> <p>17 he was going to tell the judge today that this has become a</p> <p>18 big problem. So my hunch is that he talked to the judge</p> <p>19 and the judge probably is aware of the fact that I'm not</p> <p>20 actually appointing -- or entering attorneys in my office</p> <p>21 unless they are able to take more cases and I'm the one</p> <p>22 entering. And, you know, unfortunately I'm not able to</p> <p>23 provide the representation that these people deserve and so</p> <p>24 the judge, you know, he's not a fool. He's an intelligent</p> <p>25 person. He probably thinks, okay, well I will appoint</p>
<p style="text-align: right;">Page 118</p> <p>1 that I think the prosecutors weren't advising these people</p> <p>2 of, nor should they, but it was an impact of these people</p> <p>3 not having representation. And on top of that, I think a</p> <p>4 lot of them went on probation and then later on we're</p> <p>5 dealing with probation violations where jail time became a</p> <p>6 real possibility.</p> <p>7 Q You mentioned that judges in your area have</p> <p>8 been appointing you to cases on the waiting list over your</p> <p>9 objection. Have they appointed any other attorneys in your</p> <p>10 district -- in your area besides you?</p> <p>11 A You mean other public defenders?</p> <p>12 Q Other public defenders.</p> <p>13 A Just today. They started doing that today.</p> <p>14 Well, one did.</p> <p>15 Q Who -- I know you have been here, but do you</p> <p>16 know who was appointed?</p> <p>17 A Yes.</p> <p>18 Q Who was that?</p> <p>19 A Brandon Schwartz and Tom Moser.</p> <p>20 Q And who are they?</p> <p>21 A Brandon Schwartz is an APD III in my office</p> <p>22 and Tom Moser is an APD I.</p> <p>23 Q An APD III is a more experienced attorney?</p> <p>24 A Yes. Brandon, I think he has three years</p> <p>25 maybe four; somewhere in there.</p>	<p style="text-align: right;">Page 120</p> <p>1 individual attorneys because now these people will probably</p> <p>2 get faster representation or he can order them to go see</p> <p>3 them or do whatever the judge feels is appropriate.</p> <p>4 Q If you spent the time you thought necessary to</p> <p>5 effectively prepare one of your client's cases, say one</p> <p>6 that was going to trial; what would happen to your other</p> <p>7 clients?</p> <p>8 A Nothing.</p> <p>9 Q What do you mean by nothing?</p> <p>10 A Well, nothing is happening in their cases</p> <p>11 that's what I mean. They get pushed aside.</p> <p>12 Q Do you think the same would happen for other</p> <p>13 attorneys in your office if they were able to focus on a</p> <p>14 particular case, complex case, and give it the time that it</p> <p>15 deserved?</p> <p>16 A With their current caseload, yes, I still</p> <p>17 think that would happen. It does happen.</p> <p>18 Q Are there times you have to triage cases doing</p> <p>19 less on one to do more on others?</p> <p>20 A Every day.</p> <p>21 Q Do other attorneys in your office have to</p> <p>22 triage their caseloads?</p> <p>23 A Yes.</p> <p>24 Q Doing less on one so they can be more</p> <p>25 effective on others?</p>

30 (Pages 117 to 120)

<p style="text-align: right;">Page 121</p> <p>1 A Yes.</p> <p>2 Q Is there anything else you think we should</p> <p>3 know about your office's ability or difficulty in providing</p> <p>4 effective representation to people eligible for</p> <p>5 representation?</p> <p>6 A I think we have covered a lot of it. But I</p> <p>7 would say the problem is getting worse as people continue</p> <p>8 to leave and as the quality of candidates we get continues</p> <p>9 to decline. One of the complaints that we haven't talked</p> <p>10 about but that's made, and Judge Pearson put this in his</p> <p>11 Order, is that the resources in the system are not spread</p> <p>12 equally. I don't know if that's true or not. I don't know</p> <p>13 what's going on in other offices. My experience has been</p> <p>14 that everybody thinks that their office is the worst and</p> <p>15 really it sounds like when I meet with other attorneys, we</p> <p>16 are all equally bad. So I can only speak to my office.</p> <p>17 But in my office, if things don't change things are only</p> <p>18 going to get worse. And we are not gonna -- I say that</p> <p>19 like it's not -- we're not going to maintain the bad</p> <p>20 representation we provided. It is getting worse. Our</p> <p>21 caseloads are going up and the quality of our attorneys is</p> <p>22 going down and the ability to train them and mentor them is</p> <p>23 decreasing.</p> <p>24 Q Why do you think it will continue to get</p> <p>25 worse?</p>	<p style="text-align: right;">Page 123</p> <p>1 hasn't worked out for them and, you know, this provides a</p> <p>2 steady income. I think we are seeing the few applicants I</p> <p>3 have, either they don't have licenses or they are the</p> <p>4 people who couldn't cut it in private practice and are</p> <p>5 looking for a paycheck. They really don't have any drive</p> <p>6 to do what this job requires. They, just like I said,</p> <p>7 looking for a paycheck; a steady paycheck.</p> <p>8 MR. SHAHABIAN: Thank you, Mr. Crowell. I</p> <p>9 have no further questions at this time.</p> <p>10 QUESTIONS BY MR. RAMSEY:</p> <p>11 Q Good evening.</p> <p>12 A Evening. Is it evening already?</p> <p>13 Q It's getting close, five minutes away.</p> <p>14 Q Again, my name is Steven Ramsey and I</p> <p>15 represent the State of Missouri and Governor Eric Greitens.</p> <p>16 I have a handful of questions. If at any time, again, if</p> <p>17 you need a break, just let me know and we can take that</p> <p>18 break but I will try to power on through. To begin, to</p> <p>19 fill in a few of the gaps that I may have missed or may</p> <p>20 have not been asked. You came straight from undergrad into</p> <p>21 law school; is that correct?</p> <p>22 A Yes.</p> <p>23 Q What were your degrees in in undergrad?</p> <p>24 A I had a political science degree.</p> <p>25 Q And you have been with the public defender</p>
<p style="text-align: right;">Page 122</p> <p>1 A Because the experience level of the attorneys</p> <p>2 continues to go down and we used to be able to get some</p> <p>3 really quality candidates. I have been very lucky in the</p> <p>4 people I have been able to hire in the last year. But</p> <p>5 every week we get a list of new openings and every week it</p> <p>6 seems it grows and, you know, every couple of months I have</p> <p>7 an opening. And every time there is an opening, there is</p> <p>8 fewer and fewer candidates and the ones that are there are</p> <p>9 really, quite honestly, terrible.</p> <p>10 Q What do you mean by terrible?</p> <p>11 A There are people I would never consider hiring</p> <p>12 for a position but that I'm considering now because there</p> <p>13 is nobody else.</p> <p>14 Q Why wouldn't you consider them for a position?</p> <p>15 A Well, for one, I generally would want somebody</p> <p>16 who is already licensed in the state of Missouri. So that</p> <p>17 would be -- most of the people I consider now don't even</p> <p>18 have a license. It's hard to say specifics but, you know,</p> <p>19 when you do a lot of interviews you begin to, you know,</p> <p>20 notice things about the person. Are they able to -- do you</p> <p>21 believe, you know, you're making kind of instant judgments</p> <p>22 about people, but do you believe they can handle your</p> <p>23 jurisdiction. Can they stand up to judges. Do they care</p> <p>24 about, you know, what we do and our mission or are they</p> <p>25 just looking for a job because, you know, private practice</p>	<p style="text-align: right;">Page 124</p> <p>1 system since around 2008; is that correct?</p> <p>2 A I got hired in the fall of 2008.</p> <p>3 Q And within the past year or two or so, or as</p> <p>4 far as you can remember, who all have you spoken to</p> <p>5 concerning workload and caseload concerns? I presume</p> <p>6 judges from your earlier testimony. I presume some members</p> <p>7 of the private bar from earlier testimony. Have you spoken</p> <p>8 to nonprofit organizations or the press?</p> <p>9 A Nonprofit, I'm not sure they are nonprofit,</p> <p>10 but I would say I have spoken to commissioners and I have</p> <p>11 spoken to city councilmen and I have spoken to the New York</p> <p>12 Times.</p> <p>13 Q And by commissioners you mean county</p> <p>14 commissioners?</p> <p>15 A Yes. Part of our funding comes from the</p> <p>16 commissioners. They provide the rent and utilities for our</p> <p>17 office. So I have spoke to them, you know, about our</p> <p>18 facilities and, you know, of course I talked to them about</p> <p>19 some of the problems we are facing.</p> <p>20 Q And concerning the amount of expertise and the</p> <p>21 level of experience that you testified earlier to; when you</p> <p>22 started was in the heart of the recession or the beginning</p> <p>23 of the recession, 2008 or so?</p> <p>24 A Yeah. I mean, yes.</p> <p>25 Q And would it be fair to say that as the</p>

31 (Pages 121 to 124)

<p style="text-align: right;">Page 125</p> <p>1 economy has improved, the quality of your candidates has 2 decreased? 3 A I can't speak to what the quality of 4 candidates were when I was hired up until, you know, I 5 didn't get into management, I think until, 2013 or '14. I 6 can't remember which. I think I was a good candidate. But 7 no, I would say this, the people that I started with and 8 that I saw for the first four or five years and my first 9 couple of years in management were excellent candidates and 10 went on to do great things. We used to have -- it wasn't 11 uncommon to 20 or 30 applicants to kind of go through to 12 determine who we were going to interview. We used to be 13 able to screen out people. There is no screening anymore 14 because if we screen, we wouldn't have any candidates. So, 15 yes, the quality has gone down, but also the number. 16 Q And so the period of time since you have been 17 in management has been relatively brief in terms of the 18 quality candidates coming in and out of the door? 19 A Well, I can say yes. I mean, it's been about 20 four years, but I can say I have seen a change over the 21 four years. 22 Q Sitting here today how would you define a case 23 as it's relatable to your district? 24 A A case is a client who has a criminal charge. 25 Q And how does a case become closed within your</p>	<p style="text-align: right;">Page 127</p> <p>1 previous testimony to suggest that before Hinkebein, the 2 decision, Missouri Supreme Court decision, you dedicated a 3 substantially more amount of time to supervising and 4 administrative tasks versus after Hinkebein? 5 A Yes. I mean, before Hinkebein, I was -- I 6 allowed attorneys in the office to have much higher 7 caseloads. So, again, the average case -- the highest 8 caseload in my office was somewhere around 200 and the 9 lowest would have been probably 120, maybe a little lower 10 depending on how new they were. Since Hinkebein, I decided 11 that I could no longer allow attorneys to have such 12 caseloads. So that's the purpose of the waitlist and then 13 not entering the attorneys on the case but entering myself. 14 Q And am I understanding your testimony to be 15 that before Hinkebein when the caseloads were substantially 16 larger, there was an issue effective assistance of counsel 17 there and even after your caseload control mechanisms of 18 waitlist in place that there is still a dramatic issue 19 that's getting worse as opposed to -- I will stop there, 20 yeah. 21 A Well, you said it's getting worse. I would 22 say it's getting worse for me and I would say that if we -- 23 as the judges become -- or as the waitlist fades away and 24 as we go back to business as usual, as that seems to be 25 what's probably going to happen despite my best efforts.</p>
<p style="text-align: right;">Page 126</p> <p>1 system -- or in your district? Pardon me. 2 A We close our cases based upon on the 3 conclusion of the case. So whether that's through a guilty 4 plea or if we go to trial after sentencing. When we close 5 out a case -- so the only exception to that is when we have 6 a client who goes up on a 120, so 559.115 or some other 7 120. We close the file at that time but we enter the 8 hearing date for the 559 review because if the client is 9 not going to get released, we will represent them at that 10 hearing. 11 Q And for the record, what is a 559 review? 12 A So when a client, you know, when a client is 13 sent to prison sometimes the court retains jurisdiction 14 under Section 559.115 RSMo. Basically the client goes up. 15 He does 120-days shock. He may get treatment; he may not 16 in the Department of Corrections. As long as his behavior 17 is good, he typically will get released, but that's up to 18 the judge who sentenced him. So it allows the court to 19 retain jurisdiction for that 120 days. The hearing would 20 be if -- the only time there is a hearing if the defendant 21 does something inappropriate or violates the rules of the 22 120. While in the prison, they are entitled to a hearing 23 and we would represent them at that hearing, which is a 24 farce, but we still do it. 25 Q Now am I correct in understanding your</p>	<p style="text-align: right;">Page 128</p> <p>1 The caseload is going to get worse because, generally 2 speaking, over the last, you know, twenty years or so there 3 has been a steady increase in the number of cases across 4 our jurisdiction and across Missouri. So I suspect the 5 numbers, even if the plateau they are still extremely high, 6 but I don't see that happening. But more importantly, and 7 I think as it impacts my office, is the constant turnover 8 that I have and the lack of experience that I have and the 9 quality of candidates that I'm able to hire; those are the 10 things that are going to make it continue to get worse. 11 Q You testified about an intake sheet. And I 12 believe it was in the conversation of bond arguments and 13 ascertaining whether or not there was a strong argument to 14 argue for reduction of bond. Are there other, I guess one 15 pagers, that would help train or alert your newer attorneys 16 to the expectations of various levels of representation? 17 A I know I have seen different, you know, 18 checklist-type things throughout my career as a public 19 defender that various people use. So they probably exist. 20 The intake sheet we use is actually I think three or four 21 pages because there is so much information that you really 22 need to get in that initial interview. I can't remember 23 everything and so this just -- even me with experience, I 24 would use this sheet. Are there other sheets that we could 25 probably give to attorneys, yes, but sometimes it's only as</p>

<p style="text-align: right;">Page 129</p> <p>1 good as the, you know, the user. And if user doesn't know 2 what the words mean, like for example, you asked what's a 3 559. If I put on there, you know, 559 and they have no 4 idea what that is, it's not going to be any use to them.</p> <p>5 Q So you testified -- and I think the phrase you 6 used was something to the effect of younger or newer 7 attorneys don't know what they don't know or something 8 along those lines. In what ways as their district defender 9 have you gone about educating or training them to teach 10 them what they don't know?</p> <p>11 A Well, I try to lead by example. So, you know, 12 when they are in court, I show by example. I would also 13 tried to educate them when they are in court. When they 14 bring cases to me, I would talk to them about the things 15 they need to be doing. The guidelines I make sure usually 16 on their first day or first day or two, I would make sure 17 they have a copy of the guidelines and that they have gone 18 through them. The guidelines give some guidance on how to 19 work up a case. It's not really a how-to guide, but it 20 does -- it gives you an idea. There is also an attorney 21 workbook, a new attorney workbook, that I think was created 22 by Wayne Williams in I think it's the 24th -- Area 24 23 Office of Public Defender. I give them a copy of that and 24 that is kind of a how-to guide of how to work a case 25 through the judicial system. So those would be the main</p>	<p style="text-align: right;">Page 131</p> <p>1 Q How about the usage of experts?</p> <p>2 A So with experts I would distinguish between 3 mental health experts and other experts. The reason I do 4 that is because I think they kind of cover two different 5 areas. Mental health experts I'd say has been pretty 6 level. Other experts, it's almost nonexistent. And 7 that's, I guess, that's also stayed about the same.</p> <p>8 Q And did I understand you correctly in that the 9 way you assign your cases in your district is one by 10 geography in terms of what counties the various assistant 11 public defenders are in, but also by expertise or 12 experience?</p> <p>13 A Yes. So we would not -- I would not want to 14 give a serious case to a new attorney.</p> <p>15 Q And is the assignment totally done by yourself 16 or do you, I guess, field that out to the deputy director 17 or someone else within your office?</p> <p>18 A Right now, there is kind of a mixed system. 19 So I have one APD IV, that attorney has, like I said, 15 20 years experience. He is in one county and he's handling 21 every case that comes into that county, which is at any 22 given time 150 cases. So that -- every case that comes 23 into Dent County, he gets. In all the other counties, 24 since I have waitlisted, all the cases that are open to me, 25 are being assigned out by me. And so I would determine</p>
<p style="text-align: right;">Page 130</p> <p>1 ways. That and I guess I would pair them -- I try to pair 2 them with a more senior attorney.</p> <p>3 Q Have you noticed any trends in the cases that 4 you're seeing and how they are being represented? What I 5 mean by that are you taking more depositions now than say 6 at the beginning of your tenure as district defender? Are 7 you personally or attorneys that you supervise?</p> <p>8 A So you're asking me as my tenure as a district 9 defender not as a public defender?</p> <p>10 Q Correct.</p> <p>11 A I don't think the number of depositions I have 12 had has. It's probably decreased for me personally. For 13 my attorneys and in what timeframe are you looking at?</p> <p>14 Q It can be within the past year or past two 15 years. You have been district defender for around three 16 years; is that correct?</p> <p>17 A Yes. And then I was a deputy for two before 18 that.</p> <p>19 Q Yeah. Well, within the three years that you 20 have been the district defender and if you have that's more 21 than five, I'm just trying to get a sense.</p> <p>22 A So I would say that it was pretty even 23 throughout that period until the last couple of months and 24 there has been an uptake in the number of depositions being 25 taken.</p>	<p style="text-align: right;">Page 132</p> <p>1 what cases they should get based upon the priorities that 2 the judge has already determined, which is basically are 3 they in custody or not. The cases that I don't assign out, 4 they come into my clerks and my clerks are tasked or I 5 delegate the authority to them to kind of make that 6 determination of whether or not the murder should go to 7 this APD or this APD. Generally speaking, when a serious 8 case comes in, they are going to let me know and I'm going 9 to give them some feedback.</p> <p>10 Q And when you say your clerks, are you using 11 legal assistants or your clerical staff?</p> <p>12 A Clerical staff.</p> <p>13 Q And how many trials, say within the past year, 14 has your -- have you yourself tried or your office tried? 15 So that's a two-prong question.</p> <p>16 A In the last year, I have probably tried maybe 17 a half dozen. I say my office -- and it's a rough guess, 18 but I would say probably maybe 20. That might be a little 19 high, 15 to 20.</p> <p>20 Q And are these jury cases?</p> <p>21 A Yes.</p> <p>22 Q Do you have a sense for how many bench trials 23 are tried every year in your district?</p> <p>24 A Maybe half a dozen. There is not a lot of 25 incentive to do a bench trial.</p>

<p style="text-align: right;">Page 133</p> <p>1 Q Turning to your offices determination of 2 indigency; who makes that determination in your office? 3 A It varies. So my clerical staff, if it comes 4 into the office from our front window or over the fax 5 machine, they are going to do it. If it's in court, it's 6 typically going to be -- if the legal assistant is there, 7 it's going to be the legal assistant. A lot of our 8 counties, you know, there are one or two attorneys and we 9 only have two legal assistants, so there is not really 10 enough to send a legal assistant every time. So if it's 11 just an attorney, then the attorney in court will make that 12 determination.</p> <p>13 Q Do you have any external or independent 14 controls or verification procedures in place to verify 15 whether or not someone is actually eligible for services or 16 do you rely mostly on that application itself? 17 A Well, they are required by law to be truthful 18 on the application, but that's obviously, you know, open to 19 interpretation whether they are being truthful or not. 20 It's rare that we would do an independent verification, but 21 here is what we do. So when I get an application and I 22 encourage everyone in my office to do this, if they put all 23 zeros for income and, you know, everything is zero or if 24 they write, you know, no income and whatever; I asked them 25 follow-up questions. I do do follow-up with them. Like</p>	<p style="text-align: right;">Page 135</p> <p>1 indigent, so it's not -- I don't know what percent. Like I 2 said, when I'm in court and they are not in custody, it's 3 pretty common to reject because, generally speaking, they 4 have posted bond. But I don't know. I don't have a 5 percentage or I don't have a number. Most of the people in 6 jail are going to qualify.</p> <p>7 Q And did I understand your testimony earlier to 8 be that you had never been denied an expert that you 9 thought you needed on the sole basis of funds? 10 A I have always gotten whatever expert I believe 11 I needed. I may have had to have some additional 12 discussion with the person -- the people that hold the 13 purse strings. But generally speaking, I can't think of an 14 incident where they out right denied me.</p> <p>15 Q Have you ever denied an attorney that you 16 supervised funds that you had discretion for or prevented 17 them from moving onto the upper management? 18 A I have.</p> <p>19 Q And have you done that for the sole basis of 20 funds or for the similar reason that you were denied 21 earlier? 22 A I would deny them because I would want -- 23 again newer attorneys don't understand a lot of times when 24 it's appropriate to do a deposition. So if they send a 25 request and say I would like to depose this witness and I</p>
<p style="text-align: right;">Page 134</p> <p>1 where do you live? How do you get by with no money? How 2 do you eat? You know, I ask them those types of questions. 3 Did you drive a car to court today? I lean on the side of 4 denying. So, you know, generally speaking, if they posted 5 bond, I'm going to deny them because, you know, I have to 6 be a steward of taxpayer money and I think that at least 7 some of these people might be able to hire counsel. I 8 don't know. So that's kind of where -- we don't do 9 independent verification. I have done it. I do it in rare 10 cases, especially as the case moves forward. To give you 11 an example, I had a case where an individual was 12 appointed -- we were appointed. He posted a \$100,000.00 13 bond. He was on GPS monitoring and paying for that somehow 14 every day. As we were developing the case he kept telling 15 me he owned the property that the alleged victim was living 16 on. So once I finally got record of that, I filed a motion 17 to withdraw based on the fact that he owned property. It 18 was denied. We do -- where it's apparent that there may be 19 some discrepancy with the application, we will investigate.</p> <p>20 Q Do you have a sense of how often you reject 21 applicants? And I understand your testimony earlier to be 22 that even when you reject them, the court still sometimes 23 appoints them. But how often would you say you reject 24 applications? 25 A Well, most of our applicants are truly</p>	<p style="text-align: right;">Page 136</p> <p>1 asked them well, who is that witness and it turns out it's 2 a witness for them, for the defendant. Well, I would deny 3 that request because that's foolish. Go interview them. 4 They are a favorable witnesses. But generally speaking, 5 the types of money that I control are for medical records. 6 I can control that. I can say you can't get the medical 7 records. I don't think I have ever denied that. Clothing 8 for clients for trial, you know, Good Will, Wal-Mart; I 9 approved those. I approve deposition request if it's under 10 \$500.00. I generally approve those except for what I was 11 just talking about where they don't really understand when 12 they can send an investigator out to interview. That's the 13 -- those are the main things I have control over in my 14 local budget.</p> <p>15 Q Have you ever ran out of funds in your local 16 budget and requested more for any of those various 17 categories that you just listed? 18 A I don't believe I have. I will say this, I 19 probably will this year because of the number of deposition 20 request. In the past, there used to be a policy in my 21 office for whatever reason that we were encouraged to -- 22 not by Columbia, I don't think but by the former district 23 defender to exceed \$500.00 on a deposition request. That 24 was so that the money would come out of the different 25 budget than our local budget for fear of running out of</p>

34 (Pages 133 to 136)

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Case 2:17-cv-04057-NKL Document 160-6 Filed 02/21/18 Page 35 of 74

<p>Page 137</p> <p>1 money out of the local budget. I have never done that</p> <p>2 since I have been district defender. I have always used</p> <p>3 the local budget and I don't think I have ever ran out. At</p> <p>4 least Kathy Leer, my comptroller, has never notified me of</p> <p>5 such. We have ran out of postage before, but we got more</p> <p>6 money for that.</p> <p>7 Q And when that happens, did you just request</p> <p>8 like hey, we are out of postage we need "x" amount more?</p> <p>9 A Yeah.</p> <p>10 Q When your attorneys go to trial or when you go</p> <p>11 to trial, do you normally send your attorneys with a second</p> <p>12 chair or third chair or do they try cases by themselves?</p> <p>13 A I don't think I have ever had a third chair.</p> <p>14 Generally, the practice in my office is that when you go to</p> <p>15 trial that the deputy district defender or myself should be</p> <p>16 a second chair. For my trials, personally, I will often</p> <p>17 bring along a second chair, but there are cases where I</p> <p>18 don't. It just depends on the case. There is a few</p> <p>19 reasons for that. The main reason is, again, these</p> <p>20 attorneys don't have any experience. It's often their</p> <p>21 first trial and so I want to make sure that they don't miss</p> <p>22 anything important. They make the proper objections, that</p> <p>23 the record is preserved; that sort of thing. But -- and</p> <p>24 then with the experienced attorneys, I usually have a</p> <p>25 second chair who is, again, you know they are learning. So</p>	<p>Page 139</p> <p>1 Q Would that be after the third attorney?</p> <p>2 A Typically, yes.</p> <p>3 Q As on the side, do the attorneys that you</p> <p>4 supervise have laptops so when they are at their law days</p> <p>5 and they were waiting or if they are waiting to meet with a</p> <p>6 client where they can work remotely or is it all done back</p> <p>7 at the district office?</p> <p>8 A The attorneys have laptops and they take them</p> <p>9 to court where there is WiFi. So we have basically three</p> <p>10 courts that have WiFi; three that do not. The laptop is</p> <p>11 useless where there is no WiFi. We can't access our</p> <p>12 network. The courts that have WiFi is sporadic and we</p> <p>13 borrow the prosecutor's WiFi in two of the three. So if</p> <p>14 they are new and they don't have the relationship with the</p> <p>15 prosecutor, they also don't have access to WiFi. But where</p> <p>16 there is WiFi, they do take their laptops. They do -- I</p> <p>17 mean, there is only so much you can do when you're in court</p> <p>18 and you're constantly being called up by the judge. But</p> <p>19 yeah, they do. None of the jails have WiFi. So the we</p> <p>20 don't -- the only time a laptop goes to a jail usually is</p> <p>21 if we are showing a video or some other discovery, pictures</p> <p>22 or things like that.</p> <p>23 Q And does every attorney in your office have a</p> <p>24 laptop?</p> <p>25 A Yes.</p>
<p>Page 138</p> <p>1 they go and they learn kind of how to do a trial.</p> <p>2 Generally speaking, we make them do portions of the trial</p> <p>3 like, you know, the instruction conference or, you know,</p> <p>4 maybe they cross a witness. So that's where they get their</p> <p>5 experience by second chairing.</p> <p>6 Q And there was some conversation concerning</p> <p>7 continuances. My question is if there are any policies or</p> <p>8 customs within your local district that would be akin to a</p> <p>9 first in first out or this case has been on our docket for</p> <p>10 two-and-a-half years and we need to expedite this. Is</p> <p>11 there any controlling policy to expedite those cases that</p> <p>12 have been lingering?</p> <p>13 A Well, the judges. I mean, they -- personal to</p> <p>14 my office or to the jurisdiction?</p> <p>15 Q Personal to your office?</p> <p>16 A When -- sort of. And the reason I say sort of</p> <p>17 is after a client has gone through so many attorneys,</p> <p>18 eventually it ends up on my desk because I know we can't</p> <p>19 push it any further for the client's sake but also because</p> <p>20 the courts aren't going to push it any further. The courts</p> <p>21 don't seem too interested in really protecting the client's</p> <p>22 rights. They are more interested in moving cases. So when</p> <p>23 it comes to that point where I can no longer pass it and I</p> <p>24 know the judge is going to make it go to trial, it goes to</p> <p>25 me.</p>	<p>Page 140</p> <p>1 Q Turning to your district's timekeeping</p> <p>2 history, if you will. Currently is your office tracking</p> <p>3 time in five-minute increments?</p> <p>4 A No.</p> <p>5 Q Currently is your office tracking time by</p> <p>6 tasks or by case?</p> <p>7 A No. We stopped tracking time, I believe last</p> <p>8 year when Michael Barrett indicating we could stop.</p> <p>9 Q And so currently the extent of your time</p> <p>10 keeping is how many hours per day or per case session --</p> <p>11 A Sure.</p> <p>12 Q -- your attorneys have worked?</p> <p>13 A That's correct.</p> <p>14 Q Did you ever receive training on how to</p> <p>15 effectively track your time when you were tracking your</p> <p>16 time in the five-minute increments?</p> <p>17 A I don't know that we had. I remember at our</p> <p>18 spring training there was. It seems like Peter Sterling,</p> <p>19 then our general counsel, gave us training, but it's been a</p> <p>20 long time and I don't remember. I remember their being</p> <p>21 confusion over how to categorize time because there was</p> <p>22 some areas that overlap, so they changed I think some of</p> <p>23 the categories over time. But once the RubinBrown stuff</p> <p>24 came about, it became very -- they narrowed the categories.</p> <p>25 It was pretty clear, I think, from that point forward.</p>

35 (Pages 137 to 140)

<p style="text-align: right;">Page 141</p> <p>1 Q Turning to that I want to draw your attention</p> <p>2 to Plaintiff's Exhibit marked 50. I believe it's the</p> <p>3 Missouri State Public Defender system Fiscal Year Budget</p> <p>4 Request.</p> <p>5 A Okay.</p> <p>6 Q Now you had testified earlier that you felt</p> <p>7 that some of these numbers or potentially all of these</p> <p>8 numbers were fairly conservative; is that correct?</p> <p>9 A For Rolla, I don't know about the rest.</p> <p>10 Q For Rolla.</p> <p>11 A Yeah.</p> <p>12 Q Are you familiar or did you have any hand in</p> <p>13 the creation of the underlying RubinBrown data?</p> <p>14 A Yes.</p> <p>15 Q What was the extent of that?</p> <p>16 A Well, I was the timekeeper. I was also part</p> <p>17 of the Delphi Group.</p> <p>18 Q And do you have any history aside from your, I</p> <p>19 guess law degree or undergraduate degree, concerning</p> <p>20 statistics or sociology?</p> <p>21 A No.</p> <p>22 Q Is it your understanding that the capacity in</p> <p>23 some of the hours per assigned task, if you will, were</p> <p>24 averages under the RubinBrown study?</p> <p>25 A It's my understanding they are all averages.</p>	<p style="text-align: right;">Page 143</p> <p>1 defense attorneys, either private or public defender. So I</p> <p>2 can't imagine -- I know personally when I was there and we</p> <p>3 were coming up with averages, I was thinking in my practice</p> <p>4 how much time would this case take. That was what we were</p> <p>5 instructed. To you personally, how much time would you or</p> <p>6 if you had the ideal amount of time, how much time would</p> <p>7 you spend.</p> <p>8 Q And that was your experience as a member of</p> <p>9 the Delphi Group that put data into the ultimate RubinBrown</p> <p>10 study?</p> <p>11 A I don't understand the question.</p> <p>12 Q Said another way; you're speaking from your</p> <p>13 experience of being a firsthand participant in the study</p> <p>14 itself?</p> <p>15 A Yes.</p> <p>16 Q But you didn't ultimately have a hand in the</p> <p>17 collection of the data after the fact -- after the fact?</p> <p>18 Pardon me.</p> <p>19 A I think the data was collected when we were</p> <p>20 the Delphi Group. They gave us the averages and the</p> <p>21 numbers in the group and as the Delphi panel, we adjusted</p> <p>22 those based upon our experience.</p> <p>23 Q That was after each round?</p> <p>24 A Yes. But I don't sit here and say that I</p> <p>25 understand the statistics and the whole Delphi process. I</p>
<p style="text-align: right;">Page 142</p> <p>1 Q So --</p> <p>2 A Are you talking about the categories like,</p> <p>3 murder, C, D?</p> <p>4 Q Yes</p> <p>5 A Yes, those were all averages.</p> <p>6 Q And your contention earlier is that they may</p> <p>7 or may not have taken into account the differences of</p> <p>8 experience of various attorneys?</p> <p>9 A I don't know for sure how RubinBrown</p> <p>10 calculated, but it wouldn't be a very useful number if it</p> <p>11 didn't say that you understood how to actually handle a</p> <p>12 case. Maybe not that you can handle every case, but that</p> <p>13 you have some basic criminal experience. Like I don't</p> <p>14 think that these numbers are like well, if you're any</p> <p>15 attorney, if you are a tax attorney these percentage</p> <p>16 applies to you because obviously it's going to take you a</p> <p>17 lot more time than it is someone like a public defender.</p> <p>18 Q And this is -- this or these are your</p> <p>19 assumptions sitting here looking at the numbers?</p> <p>20 A No, not really. I mean, because the Delphi</p> <p>21 Group was both public defenders and criminal defense</p> <p>22 attorneys. It was not private attorneys -- or private</p> <p>23 civil attorneys or other government attorneys. So the</p> <p>24 averages that they came up with were averages for</p> <p>25 experienced -- because they were all experienced criminal</p>	<p style="text-align: right;">Page 144</p> <p>1 was just part of it.</p> <p>2 Q I see. Turning to the individual attorneys</p> <p>3 who have left your office. Did you conduct exit interviews</p> <p>4 for each one of them?</p> <p>5 A Informally. Our HR division conducts the exit</p> <p>6 interviews, so I try not to interfere with that process.</p> <p>7 Q The HR department for your district or for</p> <p>8 your system at large? Or a different question is do you</p> <p>9 have a HR, a local HR person within your district?</p> <p>10 A We have two HR employees at least my</p> <p>11 understanding, maybe three if you count Ms. Shipma, for the</p> <p>12 entire MSPD. I don't have anybody local in my office.</p> <p>13 Q So the extent of your knowledge of why people</p> <p>14 were leaving was based on the informal conversations you</p> <p>15 had with them prior to their departure?</p> <p>16 A Well and after.</p> <p>17 Q And after.</p> <p>18 A They are still around most of them. They are</p> <p>19 just prosecutors.</p> <p>20 Q So you still see them?</p> <p>21 A I go against them now. So I train them to</p> <p>22 become prosecutors and hopefully they become a little more</p> <p>23 human in the process.</p> <p>24 Q Turning to the waitlist: My understanding</p> <p>25 from your testimony was that this was not something that</p>

<p style="text-align: right;">Page 145</p> <p>1 came down from central office, rather it was something that</p> <p>2 you had made a decision upon after speaking with the</p> <p>3 attorneys in your office and your deputy director; is that</p> <p>4 accurate?</p> <p>5 A Yes. My office -- our offices in Columbia had</p> <p>6 nothing to do with my decision to waitlist.</p> <p>7 Q And that had mixed results across the judges?</p> <p>8 A Yes.</p> <p>9 Q Within your area. Here is a question</p> <p>10 concerning the letter that you -- or the e-mail that you</p> <p>11 wrote to upper management concerning your potential</p> <p>12 departure from the Missouri State Public Defender System.</p> <p>13 Would you say or how would you describe your relationship</p> <p>14 with upper management?</p> <p>15 A I think it's good. It was a little tumultuous</p> <p>16 before I became district defender. When I became district</p> <p>17 defender, I had to supervise two prior district defenders.</p> <p>18 One that had been removed from the district defender</p> <p>19 position. Well, both had been removed from their position</p> <p>20 and I had to supervise them. So there was very much an</p> <p>21 anti-Columbia feel to the office. Since that time, I think</p> <p>22 they have been very helpful. Very supportive. Since I</p> <p>23 have started waitlisting and I have been harassing them on</p> <p>24 a regular basis for resources, I have become much more</p> <p>25 familiar with them. I get phone calls more often for</p>	<p style="text-align: right;">Page 147</p> <p>1 complaint, but they don't have the purse strings,</p> <p>2 so-to-speak.</p> <p>3 Q Turning to two exhibits. One is Petsch 5 and</p> <p>4 one is Plaintiff's Exhibit marked 54.</p> <p>5 A Got them.</p> <p>6 Q Did you -- looking at Petsch 5 first. Did you</p> <p>7 utilize this template when you drafted your writ or did you</p> <p>8 create it from scratch?</p> <p>9 A We did not -- I don't know that we had access</p> <p>10 to this at the time. Greg Mermelstein prepared a lot of --</p> <p>11 I think this it was Greg Mermelstein -- prepared a lot of</p> <p>12 guidance material. Not necessarily writs, but I mean I</p> <p>13 think, like I said, I think he prepared Exhibit 54. He</p> <p>14 prepared a power point that he provided after the</p> <p>15 management conference we had back in late September that</p> <p>16 had a lot of the, you know, case law summarized and that</p> <p>17 sort of thing. But we did not have a template that we</p> <p>18 followed in our writ. We did it on our own.</p> <p>19 Q This was -- these documents to your</p> <p>20 understanding were created after the Hinkebein decision and</p> <p>21 after, I guess, the meeting with the various district</p> <p>22 defenders and upper management?</p> <p>23 A I'm sure that this Exhibit 5 was created</p> <p>24 after. I don't know when Greg prepared the rest of this.</p> <p>25 It just -- he brought it to our attention at the management</p>
<p style="text-align: right;">Page 146</p> <p>1 better or worse.</p> <p>2 Q Would you say that you are or have been 100</p> <p>3 percent satisfied with the support from upper management in</p> <p>4 terms of addressing this workload or caseload alleged</p> <p>5 crisis?</p> <p>6 A No, it's not 100 percent.</p> <p>7 Q In what ways do you think they have come up</p> <p>8 short, if you will?</p> <p>9 A Well, I have sent a lot of conflicts to them</p> <p>10 and they have not resolved them. I need more resources,</p> <p>11 they have not provided them. They may not have them or</p> <p>12 have the resources, but that's not really my concern. I</p> <p>13 don't really care. I just want the resources. I feel that</p> <p>14 Rolla and my office has been left to fend for ourselves in</p> <p>15 some instances. Especially when I see that, you know, in</p> <p>16 the Kansas City office that Rick Petsch had Greg</p> <p>17 Mermelstein help her on a writ. So that bothers me because</p> <p>18 a writ is very time consuming process. Now to be fair, I</p> <p>19 didn't ask for help, but nevertheless. So, but I will say</p> <p>20 this every time I have asked for assistance or I have</p> <p>21 reached out to them, they have gotten back to me. They</p> <p>22 have responded. It's not always a response I like, but</p> <p>23 they are available. And I don't really have any major</p> <p>24 complaints. I think based in reality, like I said, I want</p> <p>25 more resources. I need more resources. That's my common</p>	<p style="text-align: right;">Page 148</p> <p>1 meeting. You know, I think we have a database that he puts</p> <p>2 motions on and these were all added at some point. I don't</p> <p>3 know when.</p> <p>4 Q Throughout your testimony, if I understood you</p> <p>5 correctly, a reason that you or your office have been</p> <p>6 unable to do various tasks is because you lack resources</p> <p>7 and the time to accomplish those tasks; is that a fair</p> <p>8 assessment?</p> <p>9 A Yes.</p> <p>10 Q What tasks, if any, have you been able to</p> <p>11 complete to a reasonable degree, whether it was before or</p> <p>12 after the waitlist was instituted?</p> <p>13 A Nothing as it related to the clients. We get</p> <p>14 our time sheets turned in, expense reports; administrative</p> <p>15 things. I would say that nothing that matters.</p> <p>16 Q And I hate to toss a potential hypo at you.</p> <p>17 This isn't law school. But let's say you only had two</p> <p>18 cases and one case was coming up for trial, would your</p> <p>19 preparation for that one case going to trial hinder your</p> <p>20 representation of that other case, hypothetically speaking?</p> <p>21 A Well, now you got me thinking like a law</p> <p>22 student. The answer is no. I mean, does it have the</p> <p>23 potential, yes. If one was set for trial on Monday and one</p> <p>24 was set for trial on Tuesday obviously the one on Monday is</p> <p>25 going to affect the one on Tuesday. But this isn't -- what</p>

37 (Pages 145 to 148)

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Case 2:17-cv-04057-NKL Document 160-6 Filed 02/21/18 Page 38 of 74

<p style="text-align: right;">Page 149</p> <p>1 we are talking about is not something where we are saying</p> <p>2 well, yeah, theoretically you could spend, you know, 100</p> <p>3 hours on every case. You know, you could turn over every</p> <p>4 stone. I mean, you really got to look to the rule of what</p> <p>5 is being diligent? What is being competent? What is</p> <p>6 communication? Those are the things you have to look at</p> <p>7 and are we able to do that with our current caseload and</p> <p>8 the answer is no.</p> <p>9 Q So your understanding and response to the</p> <p>10 question is not in a two case situation?</p> <p>11 A Right.</p> <p>12 Q Not currently at the level that you are</p> <p>13 representing cases, which I believe you said you have</p> <p>14 average about 75 cases for the attorneys that you're</p> <p>15 supervising right now?</p> <p>16 A I would say probably somewhere around there,</p> <p>17 yeah.</p> <p>18 Q So it's not two. It's also not 75 -- or I</p> <p>19 mean, I'm sorry, two would be fine, 75 is not fine?</p> <p>20 A Yes. And of course it's not as simple as</p> <p>21 saying a number because the reality is, you know, maybe it</p> <p>22 would be okay if it were 75 misdemeanors, maybe. You know,</p> <p>23 but our caseload is not predominately misdemeanors. It is</p> <p>24 predominantly felonies. And a serious felony -- maybe two</p> <p>25 capital cases would be too much. I don't know. I don't do</p>	<p style="text-align: right;">Page 151</p> <p>1 very strong against them. The other may be more iffy or --</p> <p>2 you know, there is so many different permutations that you</p> <p>3 can think of that I really can't give you an answer on</p> <p>4 that. I don't know how much time an A felony is going to</p> <p>5 take until you finish the case.</p> <p>6 Q Sure. Have you ever been judicially</p> <p>7 determined to have provided ineffective assistance of</p> <p>8 counsel?</p> <p>9 A No.</p> <p>10 Q Has an attorney that you have supervised been</p> <p>11 judicially determined to provide ineffective assistance of</p> <p>12 counsel?</p> <p>13 A Not since I have been supervising.</p> <p>14 Q Almost there. So you started off in</p> <p>15 responding to the Hinkebein decision with various letters</p> <p>16 and reaching out to the various judges that you work with</p> <p>17 in your district. You also sought a writ, which was denied</p> <p>18 by the Southern District Court of Appeals or are you in the</p> <p>19 Eastern District?</p> <p>20 A Southern.</p> <p>21 Q Southern. And that was also denied by the</p> <p>22 Supreme Court of Missouri; is that correct?</p> <p>23 A That's correct.</p> <p>24 Q And then you decided to file two chapter</p> <p>25 600.063 motions?</p>
<p style="text-align: right;">Page 150</p> <p>1 capital cases. But you can't -- it's hard to say what the</p> <p>2 right number would be because it varies depending the type</p> <p>3 of case, their experience level. There are so many factors</p> <p>4 that go in. That's why I don't use -- when I talk to my</p> <p>5 attorneys, I don't say you're over 50 cases, you're</p> <p>6 overworked. I would say something along the lines like,</p> <p>7 you know, your caseload is at 50. Do you feel that you can</p> <p>8 handle additional cases, if so let me know. And then the</p> <p>9 other thing I would look at is, okay, well they are 50</p> <p>10 misdemeanors. They can handle another ten. Or whatever,</p> <p>11 I'm just throwing out numbers. But if it's 50 A, B</p> <p>12 felonies, you know, that's a big caseload in my opinion and</p> <p>13 those cases where you're looking at up to 15 years or life.</p> <p>14 Those people deserve -- they don't deserve better</p> <p>15 representation, but they take more time.</p> <p>16 Q Even with them -- would you agree that even</p> <p>17 with then those higher felonies, if you will, so let's say</p> <p>18 a Class A, that there are different time requirements</p> <p>19 depending on the particulars of that particular case?</p> <p>20 A Each case is unique, so I can't tell you that</p> <p>21 if I got one indictment on a Class A felony and another</p> <p>22 indictment on a Class A felony, they are not -- I'm not</p> <p>23 saying that's ten hours on each one or whatever. One</p> <p>24 client may say I want to plead. Let's try to get this done</p> <p>25 as quickly as possible. I'm guilty and the evidence is</p>	<p style="text-align: right;">Page 152</p> <p>1 A I filed -- well first what I did after the</p> <p>2 writ was denied by the Supreme Court, I filed -- I don't</p> <p>3 know what you call it, but I call it a notice of 600.062 to</p> <p>4 the judge saying my whole office is overworked. I can't do</p> <p>5 600.063, so I'm going to waitlist basically. Then I had a</p> <p>6 conversation with the presiding judge of the 26th Circuit,</p> <p>7 John Beger and he said look, if you want any relief at all,</p> <p>8 you've got to do 600.063 because that's the only way I can</p> <p>9 consider your waitlist. So based on that conversation, I</p> <p>10 went ahead that same day I filed a .063 in each circuit.</p> <p>11 Q I just want to be clear that it was in the</p> <p>12 42nd Circuit that relief was granted?</p> <p>13 A Yes.</p> <p>14 Q And in the 25th Circuit, it's pending for</p> <p>15 Wednesday?</p> <p>16 A Yes.</p> <p>17 MR. RAMSEY: No further questions.</p> <p>18 MS. SHIPMA: I just have one -- well, one</p> <p>19 topic.</p> <p>20 QUESTIONS BY MS. SHIPMA:</p> <p>21 Q I think that I heard you say earlier that if</p> <p>22 you have a case where client has a 120, did you say that</p> <p>23 you close the file? So the system shows it closed but you</p> <p>24 schedule -- you're nodding your head. So do you close the</p> <p>25 case file; is that correct?</p>

<p style="text-align: right;">Page 153</p> <p>1 A Yes.</p> <p>2 Q But you schedule the hearing date on the</p> <p>3 calendar?</p> <p>4 A Yes.</p> <p>5 Q Then if it needs to go to hearing, you reopen</p> <p>6 the case; is that correct?</p> <p>7 A I don't know that we reopen it. I mean, it</p> <p>8 would not be -- you would not see an additional case in our</p> <p>9 database. Like it would not be like okay, now we have a</p> <p>10 new case number. The file would stay closed. We would</p> <p>11 just take that closed file with us to court and say hi,</p> <p>12 Judge, I'm here representing so and so.</p> <p>13 Q So those 120 cases aren't showing out there as</p> <p>14 open files on your system for that period of four months</p> <p>15 that the client is in treatment?</p> <p>16 A That's correct.</p> <p>17 MS. SHIPMA: Nothing further.</p> <p>18 MR. SHAHABIAN: I just have a few follow-up</p> <p>19 questions. I will try not to be too much longer.</p> <p>20 QUESTIONS BY MR. SHAHABIAN:</p> <p>21 Q You mentioned in response to questions from</p> <p>22 the State that you thought the waitlist would fade away.</p> <p>23 What did you mean by that?</p> <p>24 A You know, we are trying to be optimistic and</p> <p>25 hope that something changes and that the clients we</p>	<p style="text-align: right;">Page 155</p> <p>1 to mark it Plaintiff's 60. Do you recognize this document?</p> <p>2 A I do.</p> <p>3 Q What is it?</p> <p>4 A It is the workbook that we provide to new</p> <p>5 attorneys.</p> <p>6 Q Is that the document you're referring to</p> <p>7 during State's examination?</p> <p>8 A It is.</p> <p>9 Q You can put that aside. I was just making</p> <p>10 sure I understood what was going on. You mentioned that</p> <p>11 you were a member of the Delphi Group. Could you explain</p> <p>12 what that was and what your role was?</p> <p>13 A So the way I understood the process of the</p> <p>14 whole RubinBrown study was that first they did a</p> <p>15 timekeeping -- well, first they had to identify categories</p> <p>16 to keep track of time. Once they identified those</p> <p>17 categories, they then asked the attorneys in the system to</p> <p>18 keep track of their time. I wasn't part of any of that. I</p> <p>19 just kept track of my time. Once they had enough time or</p> <p>20 they had the time that they needed to kind of reflect what</p> <p>21 we were spending our time on, they brought together a</p> <p>22 group -- and I don't remember how many of us there were,</p> <p>23 maybe 30, but it was half public defenders, half private</p> <p>24 attorneys and I don't know how they selected them, but</p> <p>25 anyway. They were all experienced attorneys. In fact, I</p>
<p style="text-align: right;">Page 154</p> <p>1 represent get the representation they deserve. So you do</p> <p>2 things to facilitate that process, like waitlisting. But</p> <p>3 as you progress and as the courts deny your relief and as</p> <p>4 you fail to get any relief from upper management and as the</p> <p>5 court slowly chip away at what you have done by appointing</p> <p>6 you and as of today appointing individual attorneys in</p> <p>7 violation of the Supreme Court -- Missouri Supreme Court</p> <p>8 precedent; you see it fading. You know, what's a waitlist</p> <p>9 if it doesn't really matter if the judge is just going to</p> <p>10 appoint you anyway. You're just wasting time on a</p> <p>11 waitlist. So that's what I meant by fading is that the</p> <p>12 things that we are doing to show or to try to reduce our</p> <p>13 workload so that we can be ethical; nobody seems to care</p> <p>14 about. They don't really care that we are saying that we</p> <p>15 are unable to provide ethical representation. Probably</p> <p>16 more importantly, they don't really care whether or not a</p> <p>17 defendant receives representation at all. They just know</p> <p>18 that they have to have an attorney sitting there next to</p> <p>19 him to process him or her. So that's what I mean by fading</p> <p>20 is that at the end of the day, I think Hinklebein should</p> <p>21 have been a wake-up call to everyone that something needed</p> <p>22 to change, but it didn't wake anybody up.</p> <p>23 Q You mentioned an attorney workbook. I'm going</p> <p>24 to hand you a document. I'm just curious if this is the</p> <p>25 workbook you're referring to. I'll ask the court reporter</p>	<p style="text-align: right;">Page 156</p> <p>1 was probably one of the less experienced in the panel and I</p> <p>2 had been around for maybe five years. We all came together</p> <p>3 several times, spent the day going through the averages of</p> <p>4 the times that they've collected, including the outliers.</p> <p>5 They asked us in the group, they said, "Do you think that</p> <p>6 the average is right or do you think it's low or do you</p> <p>7 think it's high? How should we adjust it? So we would</p> <p>8 adjust it however the group believed it should go up or</p> <p>9 down. And then if I remember correctly, we would go back</p> <p>10 and they would send another survey out and say like here is</p> <p>11 the new high; here is the new low and that sort of thing.</p> <p>12 Anyway, after we did that several times, that came up with</p> <p>13 -- that's how they came up the number to reflect the amount</p> <p>14 of time on average that an attorney should expect to spend</p> <p>15 on those case types.</p> <p>16 Q And by -- when you refer to experienced</p> <p>17 private attorneys, were those attorneys experienced in</p> <p>18 criminal cases?</p> <p>19 A Yes. Exclusively.</p> <p>20 Q Exclusively in criminal cases?</p> <p>21 A And they may have done other -- they may have</p> <p>22 had other practice, but they were brought in because they</p> <p>23 were criminal defense attorneys.</p> <p>24 Q And when you were responding to questions from</p> <p>25 the State on hypothetical, you mentioned that you don't</p>

<p style="text-align: right;">Page 157</p> <p>1 just look at the number of cases that an attorney has</p> <p>2 because the complexity of the case, such as whether it's a</p> <p>3 misdemeanor or an A, B felony affects the impact that that</p> <p>4 case has on an attorney's workload. Is your understanding</p> <p>5 that the metrics the RubinBrown study was attempting to</p> <p>6 establish to adjust for differences in the complexity of</p> <p>7 cases?</p> <p>8 A Yes. They were meant to be averages taking</p> <p>9 into consideration some cases are going to take a lot of</p> <p>10 time and some cases aren't going to take as much time. So</p> <p>11 you try to come up with some number that reflects how much</p> <p>12 time, on average, you would spend on a particular case.</p> <p>13 Q And when you say a particular case, you mean a</p> <p>14 particular kind of case, like an A, B felony?</p> <p>15 A Yes. Based on the case types within the</p> <p>16 RubinBrown.</p> <p>17 Q Do you remember what those case types were</p> <p>18 roughly?</p> <p>19 A Murder, sex cases, C -- or A, B felonies, C,D</p> <p>20 felonies, misdemeanors, probation violations, appeals, and</p> <p>21 I think special sex cases like -- I can't.</p> <p>22 Q That's fine.</p> <p>23 A Yes, special sex cases, the civil ones.</p> <p>24 Q If you could turn back to Plaintiff's 57.</p> <p>25 That's the e-mail you sent to upper management. You were</p>	<p style="text-align: right;">Page 159</p> <p>1 but we don't -- we didn't have -- we don't have the</p> <p>2 applicants.</p> <p>3 Q So you wouldn't be able to fill that attorney</p> <p>4 spot because you don't have qualified applicants for it?</p> <p>5 A Right.</p> <p>6 Q What in your opinion would be ways to get more</p> <p>7 qualified applications?</p> <p>8 A Well, I can think about what keeps people</p> <p>9 around. That's -- people generally don't become public</p> <p>10 defenders to get rich. They become public defenders</p> <p>11 because they want to make a difference and they want to</p> <p>12 help the least fortunate in society; those charged with</p> <p>13 crimes. When they are not able to do that and it's quite</p> <p>14 apparent that we are not able to do that, it's just -- you</p> <p>15 are not going to attract those people. I don't know where</p> <p>16 they go, but they go somewhere else. A lot of -- they go</p> <p>17 to the prosecutor's office. I have several friends that</p> <p>18 were public defenders that are now at the Attorney</p> <p>19 General's office. They don't stick around and they don't</p> <p>20 apply. In my area, you know, obviously money is an issue;</p> <p>21 \$39,000.00 is a low -- you're not going to attract very</p> <p>22 many people when you're only making \$39,000.00 a year and</p> <p>23 you're expected to work upwards of 60 hours a week or more.</p> <p>24 That's outrageous. You're -- I don't know if -- you're</p> <p>25 barely making \$15.00 an hour. People make more than that</p>
<p style="text-align: right;">Page 158</p> <p>1 discussing in the State's examination your request to upper</p> <p>2 management and responses from them and your relationship</p> <p>3 with them. If you would look at the first page of Exhibit</p> <p>4 57. Do you see where Ellen Blau says, "I'm including</p> <p>5 Michael, Joel, Leon, Greg, and Jackie in your e-mail."</p> <p>6 She also says, "I will give you a call on Monday." Do you</p> <p>7 see where it says that?</p> <p>8 A Yes, I do.</p> <p>9 Q Did you speak with Ellen after sending her</p> <p>10 this e-mail?</p> <p>11 A I'm sure I did.</p> <p>12 Q Do you recall what if anything upper</p> <p>13 management told you in response to this e-mail?</p> <p>14 A I know I have had several conversations with</p> <p>15 Ellen and Michael kind of related to this. They are, you</p> <p>16 know, they are concerned. They are supportive. They</p> <p>17 always let me know they'll do whatever they can for me.</p> <p>18 Obviously, the resource issue is really what this boils</p> <p>19 down to and that there is just not the resources available.</p> <p>20 In fact, Michael has even indicated to me in conversations,</p> <p>21 you know, when I say look I need more attorneys. He has</p> <p>22 indicated, he's like well, what if I gave you another spot.</p> <p>23 Could you fill it? Implying that he might give me another</p> <p>24 spot and the answer is no. I had to tell him no and I</p> <p>25 hated doing it because I would love another attorney spot,</p>	<p style="text-align: right;">Page 160</p> <p>1 working at restaurants and, you know, doing tasks that</p> <p>2 don't weigh on their mind all night long. That they can't</p> <p>3 sleep at night because they feel bad that their client is</p> <p>4 sitting in jail and they could have done more if they had</p> <p>5 only worked longer. So pay is a factor. The hours is a</p> <p>6 big factor. The lack of respect; nobody wants to be a</p> <p>7 public defender. It's not like it's a prestigious</p> <p>8 position. You know, if you want to be a judge some day,</p> <p>9 you're not going to be a public defender; you're going to</p> <p>10 be a prosecutor. All of the judges in my neck of the woods</p> <p>11 were prosecutors. They weren't public defenders. So there</p> <p>12 is a prestige issue. You know, some people overcome that.</p> <p>13 I don't necessarily care but for a lot of young people, you</p> <p>14 know it's difficult. There is not just a lot of pros to</p> <p>15 being a public defender. If you don't have the drive,</p> <p>16 you're not going to be able to do it. Even if you have the</p> <p>17 drive, we will stamp it out of you pretty quickly when you</p> <p>18 realize you can't do the work that you want to do.</p> <p>19 MR. SHAHABIAN: I have no further questions.</p> <p>20 THE VIDEOGRAPHER: This concludes the</p> <p>21 videotaped deposition of Matthew Crowell at 5:53 p.m. We</p> <p>22 are off the record.</p> <p>23 (Deposition concluded at 5:53 p.m.)</p> <p>24</p> <p>25</p>

40 (Pages 157 to 160)

1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)

) ss.

3 COUNTY OF GREENE)

4 I, Jenna Petree, do hereby certify that the
5 witness whose testimony appears in the foregoing deposition
6 was taken by me to the best of my ability and thereafter
7 reduced to typewriting under my direction; that I am
8 neither counsel for, related to, nor employed by any of the
9 parties to the action in which this deposition was taken,
10 and further that I am not a relative or employee of any
11 attorney or counsel employed by the parties thereto, nor
12 financially or otherwise interested in the outcome of the
13 action.

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16 Court Reporter

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A	148:7	adjusted 143:21	117:3	anticipate 10:16
A,B 82:3	account 63:18	administrative	agreements	anticipated 37:1
abided 84:22	64:5,6,11,11	10:23 11:2,8,18	113:20 115:4	anticipates
ability 20:14	142:7	11:21,23 12:2,3	116:9	64:19
23:6 32:13	accurate 11:22	12:10 13:9	ahead 17:7,14	anybody 8:1,4
34:18 35:2,11	63:7 145:4	16:11 64:6	20:10 88:13	74:25 79:15
37:7,9 39:14	accurately 63:4	127:4 148:14	152:10	90:15 144:12
42:19 46:12	acknowledge	admit 114:7	akin 138:8	154:22
52:13 54:13	98:18	adopted 89:2	al 1:4,7 3:4,7,19	anymore 25:24
55:13 57:6,9	acknowledged	adult 59:13,13	3:20 5:4,5	115:12 116:14
59:18 60:11	88:16	advanced	Alan 4:8 5:18	125:13
68:3 77:16	acknowledges	67:24	Alaris 3:15 4:20	anyway 96:11
93:10 94:12	98:21	advantage 52:2	4:24 5:8,12	154:10 155:25
96:3 106:25	Acknowledg...	53:2 92:17	alert 128:15	156:12
121:3,22 161:6	53:25	adversarial	alleged 45:11	APD 53:16
able 21:20 26:6	action 20:21	23:25	134:15 146:4	118:21,22,23
27:2,18 28:7	161:9,13	advice 18:24	allotted 38:12	119:1 131:19
28:11,17 29:13	actions 20:13	50:24	allow 89:25	132:7,7
29:17 33:2	active 20:22	advise 19:4	98:25 99:4	apparent 30:11
35:22 43:15	actual 25:6	51:13 54:4,9	102:24 127:11	134:18 159:14
43:18 44:7,8,8	add 79:15	54:13 57:12,13	allowed 127:6	apparently
48:14,18,19	added 148:2	117:15,15	allowing 117:13	25:22
50:23 53:4	addition 16:10	advising 118:1	allows 126:18	appeals 80:14
69:23 70:8	35:9 69:3	advocate 21:20	alternatives	101:6 151:18
71:24 72:2	additional 71:23	46:12,16 52:13	96:7	157:20
78:3 79:21,23	74:12 135:11	affect 55:12	amazing 56:7	appear 44:10
82:16 88:18	150:8 153:8	106:25 148:25	amount 24:4	80:23 86:12
90:18,19,23	address 95:17	affiliation 10:3	31:24 38:7	89:5,20
96:1,2 97:19	98:8 102:24	afraid 52:5,6	62:21,25	97:25 100:18
98:20 119:21	addressing	afternoon 3:14	68:24 124:20	110:8
119:22 120:13	146:4	3:15 6:11,12	127:3 137:8	appearance
122:2,4,20	adequate 10:16	63:14,15	143:6 156:13	18:12,14 28:14
125:13 128:9	23:7 27:21	age 6:7 32:2	ample 47:16	78:18
134:7 148:10	28:22,25	aggravators	analysis 30:15	appearances
149:7 159:3,13	30:14 37:25	94:12,15,20,21	62:25	28:12,13
159:14 160:16	40:23 44:18	95:1	anecdotal 58:7	appeared 20:13
absolutely	46:11,16 50:11	ago 58:2	Anjali 4:3 5:17	appears 62:9
32:16 42:20	50:24 51:12	agree 112:18	annoyed 20:7,8	62:15 161:5
57:15 76:23	55:19 62:22	114:13 150:16	answer 6:23	applicants
accept 113:23	62:24 71:13	agreed 5:24	7:2,6,6,13	108:20 123:2
115:1,17	92:11	105:17 111:25	13:15 17:11	125:11 134:21
accepted 50:8	adequately	agreed-to	35:7 50:15,22	134:25 159:2
76:24	46:22 47:12	115:18	71:12 81:10	159:4
access 139:11,15	50:13 60:22	agreement	148:22 149:8	application 18:3
147:9	61:3 71:11	55:23 84:18	151:3 158:24	18:9 20:21,25
accomplish	adjust 156:7,8	111:14 112:4	anti-Columbia	21:7 78:17,22
	157:6	114:21,21 115:8	145:21	78:23 110:23

133:16,18,21 134:19 application-w ... 103:18 applications 18:2,4 134:24 159:7 applied 21:3 79:5 83:10 103:14 applies 103:14 104:1 116:14 142:16 apply 36:6 59:24 70:21 76:12 81:14 103:11 104:2,3 159:20 appoint 84:23 85:1 99:1 102:12 112:22 119:4,25 154:10 appointed 18:17 21:8 99:6,11,12 99:13 100:1,2 111:8,16 113:3 114:15,17 118:9 118:16 134:12 134:12 appointing 20:8 81:16 85:7 89:2 110:12 114:22 118:8 119:20 154:5,6 appointment 100:24 112:11 appointments 16:5 appoints 100:22 134:23 approach 49:20,24 50:6 88:21 appropriate 29:5 120:3	135:24 appropriately 77:12 approve 136:9 136:10 approved 57:3 136:9 approximately 9:8 aprasad@orri ... 4:6 area 8:10,14,15 8:20,25 9:22 10:1 15:22 18:2 18:11,15 25:12 25:25 26:3,3 34:23,24,25 37:17 45:4 46:7 57:21 62:11,17 64:20 84:12 92:2,19 94:20 96:21 99:18 100:25 104:19 105:25 110:17 118:7,10 129:22 145:9 159:20 areas 56:11 67:5 131:5 140:22 argue 128:14 argument 42:16 45:18 47:17 128:13 arguments 73:14 128:12 arraign 20:10 arraigned 20:17 arraignment 19:16 21:9,14 38:4 arraignments 18:14,15 21:11 arrange 26:11 98:6 arrangement 26:12 114:19	arranging 55:8 arrested 17:22 18:1 ascertaining 128:13 aside 9:6 63:2 81:13 103:10 120:11 141:18 155:9 asked 71:1 98:25 99:1,2 99:25 123:20 129:2 133:24 136:1 146:20 155:17 156:5 asking 10:18 63:3 87:2 95:16 98:22 130:8 asks 110:15 aspect 96:19 aspects 55:16 aspirational 10:15 76:12 assailant 36:21 assault 117:20 assaults 41:21 41:22 asserting 107:21 assessment 148:8 assign 14:12,25 58:20,22,25 59:5,23 79:23 81:4 131:9 132:3 assigned 14:16 14:17 48:16,17 85:14 131:25 141:23 assignment 131:15 assist 13:4,8 32:12 46:12 52:13 56:16 84:20 assistance 74:5	74:7 101:3 127:16 146:20 151:7,11 assistant 9:7,14 88:23 98:13 131:10 133:6,7 133:10 assistants 13:6 132:11 133:9 assisting 13:11 associate 21:15 99:7,8 assume 32:1 50:16 assuming 112:22 114:22 assumptions 142:19 ate 48:3 attacking 41:9 attempt 89:14 95:19 attempting 157:5 attempts 84:20 84:23,25 92:7 attended 9:14 attention 74:14 76:10 141:1 147:25 attorney 4:9 5:13 6:14 8:12 13:10,19,21 14:1 14:2,4,5 16:1 19:3,4,7,11,18 25:6 27:10,13 30:7,8,9,10 38:6 40:17,17 40:17,19 48:17 48:19 49:1 50:18 51:5,25 54:4,6,10 55:7 55:10 58:3,4 59:8 61:2,12 61:19 63:14 65:16,24 66:11 66:14 69:19	70:19 71:1,4 76:23 77:7,17 82:23,23 85:3 85:6,7,9 89:8 89:11,12,16 92:15 93:15 94:5 98:5 103:6 104:11,13 104:15 106:7 106:20,22,23 106:24 107:6 107:7,15,17 108:4,12 109:9 117:9,15 118:23 119:1,8 129:20 129:21 130:2 131:14,19 133:11 133:11 135:15 139:1,23 142:15,15 151:10 154:18 154:23 156:14 157:1 158:25 159:3,18 161:11 attorney's 14:20 53:10 157:4 attorney-client 22:20 29:24 attorneys 10:8 11:12,12 12:6,14 12:15,16,20 13:4,18 14:7,11 14:13,14,15,17 14:19,23,25 21:10,10,23 22:7 25:6 27:6 29:16,17 32:2,7,11,13,19 32:23 33:6 36:7 37:17 39:14,24 40:22 41:12 42:19,24 46:15 51:11 52:4,21 53:3 53:13,17 54:9 55:15 57:1,6
--	--	--	---	---

57:10,13,21	145:3 149:14	89:18 98:1,9	110:14 111:11	5:11
58:13,16,20	150:5 154:6	109:21 127:24	bear 75:17	better 27:9,12
58:23,24 59:1	155:5,17,24	139:6 146:21	becoming	27:19 43:9,9
59:24 60:21	155:25 156:17	147:15 156:9	69:13	43:12 52:20
61:13 63:10,10	156:17,23	157:24	began 77:23	53:4 56:16
63:12,18,19,22	158:21	bad 33:11 121:16	79:12 91:4	93:8 146:1
64:8,9,13,19	attract 159:15,21	121:19 160:3	Beger 152:7	150:14
64:21,24 65:2	August 109:6	bailliff 26:20	beginning 19:16	beyond 9:8
65:4,7 66:9,10	authority 132:5	balance 68:6	66:11 124:22	20:11 21:17
66:10,14,15,19	availability 81:7	bar 97:10,11	130:6	73:15 79:24
66:23,25 67:1	available 35:25	99:11 109:1,4	begins 49:15	big 15:22 16:18
67:2,11,12,22	36:1 56:2	124:7	50:6	25:12 35:2,4
68:3,9,15	68:8 88:6	barely 159:25	behalf 1:17 6:7	36:22 38:5
69:5,7,19	103:6 109:9	Barrett 140:8	behavior 126:16	117:23 119:18
70:21,23 71:9	146:23 158:19	based 10:10	beings 109:22	150:12 160:6
71:14,24 72:2	average 13:17	14:25 20:13	belief 20:7	bigger 27:3
72:8,14 73:17	15:25 16:25	25:2 31:25	116:10	biggest 41:21
74:11,23 75:13	16:25 17:3,4	32:2 38:18	believe 7:21	106:10 117:4
77:1,6,10,14,22	27:10 28:10,17	40:13,14	8:21 14:1 21:24	Bill 111:23 116:11
77:25 78:12	40:5 82:15	62:23,25	28:22 31:21	bills 94:6
79:20 81:6	110:17 127:7	63:17 72:16	33:14 34:4	Bird 9:23,24
86:4,5 87:4,14	149:14 156:6	126:2 132:1	39:16 48:7	bit 16:3 64:18
87:16 92:3,3,7	156:14 157:12	134:17 143:22	62:23 65:2	110:2
92:16,18,21	averages	144:14 146:24	69:25 70:2,6	blame 24:3
93:5 96:1 99:1	141:24,25	152:9 157:15	79:22 80:6	35:20
99:18 101:19	142:5,24,24	basic 31:21	81:15 85:23	Blau 90:18 95:9
102:7 103:15	143:3,20	45:17,18 67:19	89:12 99:7,23	95:16 110:15
104:1,3,19	156:3 157:8	67:22 70:23	100:11 101:17	158:4
105:5,18 106:6	avoid 19:25	75:8,13 142:13	102:14 103:2	blood 34:15
106:12,13,25	57:22,24	basically 6:19	104:10,23	Bluffs 4:21
107:19 108:1,5	awaiting 107:24	48:18 65:13	105:7 111:21	boils 158:18
108:7,13	aware 18:19	66:13 75:10	122:21,22	bolts 65:11
109:10 116:21	22:3 54:12	77:24 78:25	128:12 135:10	bond 18:13 25:4
118:9 119:11,11	105:12,24	80:10 84:21	136:18 140:7	25:4,7 43:18
119:20 120:1	117:11 119:19	97:3 102:6,15	141:2 149:13	43:19,21 44:2
120:13,21		109:7 111:1,23	believed 73:12	44:3,18,22,23
121:15,21 122:1	B	116:20 126:14	102:7 156:8	44:24 46:13
127:6,11,13	B 2:6 45:24	132:2 139:9	bench 132:22	46:16,17
128:15,25	82:2 150:11	152:5	132:25	128:12,14
129:7 130:7,13	157:3,14,19	basics 65:8,10	berated 71:5	134:5,13 135:4
133:8 135:23	back 10:4 11:19	66:9	Bernstein 98:13	bonds 20:5
137:10,11,20	22:18,19	basis 21:24	best 10:10 22:21	45:19,21 46:8
137:24 138:17	24:24 32:14	23:21 60:13	53:1 60:18	bono 105:12,23
139:3,8 140:12	34:11 46:21	79:4 135:9,19	61:19 77:3	105:25
142:8,22,22	49:14,16,23	145:24	93:21 96:2	born 53:23
142:23,23	50:4 67:21	Bates 86:10	127:25 161:6	borrow 139:13
143:1 144:2	74:16 80:15	89:5,18,19	Bethany 4:24	bothered 74:19

bothers 146:17	C	21:16 22:1,12	132:8 134:10,11	32:25 33:12
bound 41:4	C 4:1 108:10	23:16,22,24	134:14 137:18	34:6 35:12
box 101:11	142:3 157:19	29:2,4,7,10,12	138:9 140:6,10	36:7,7 37:10
branch 8:15	C,D 157:19	29:25 30:1,7	142:12,12	38:4,10,14,24
brand 63:19	calculated	30:16 31:7,10	143:4 147:16	38:25 39:6,8
77:7 100:5	142:10	31:16 32:4,12	148:18,19,20	39:9,10 40:9
108:4	calendar 153:3	33:8,9,14 35:8	149:3,10 150:3	41:20,22 43:1
Brandon 118:19	call 15:17 23:18	35:16,21,22	150:19,20	43:2,4 44:23
118:21,24	25:4 65:8	36:3,16,17 37:1	151:5 152:22	46:2,7 47:9
break 7:10,12,14	82:21 152:3,3	37:4,22 38:3	152:25 153:6	48:23 51:9,13
30:18 49:6	154:21 158:6	38:5,17 40:18	153:8,10	52:11,25 54:12
109:17 123:17	called 30:6	41:4,6 42:10	156:15 157:2,4	55:16 57:16,18
123:18	72:11 105:2	42:12 43:8,12	157:12,13,14,15	58:20 59:25
breakout 65:23	139:18	43:14,17 45:1,7	157:17	61:10 62:25
breaks 7:9	calls 145:25	45:11,14 48:16	caseload 10:24	63:24 67:10
breath 7:11	cancer 73:9	49:20,24,24	11:4,21 14:24	68:6,13 69:15
Brice 88:23	candidate	49:25 50:17	15:22 27:6,11	69:21 71:15
brief 125:17	125:6	50:18 51:4,5,6	27:17 29:17	72:9,17,19
briefly 10:2	candidates	51:19,23,23	34:17 35:10	76:6,8 79:19
bring 20:23	68:18,19,24	52:2,3,21	55:12 59:17	79:21,23,23
26:19 54:22	121:8 122:3,8	54:17 55:23	61:20 62:8	80:8,13,16,18
71:10 129:14	125:1,4,9,14,18	55:24 56:17	68:2 70:7	80:21,21,25
137:17	128:9	59:23 60:18	72:10,12,19	81:1,4,7,8,9,14
Broadway 4:21	canine 34:15	65:8,15 67:4,4	73:11,12 77:11	81:20,20,22
broom 25:22	capability	67:24 72:3,24	77:19,20 78:13	81:24 82:4,11
brought 24:17	105:23	73:4,9 75:13	79:22 86:2	83:2,24 84:7
42:4 74:14	capable 108:22	77:13 78:19	92:4 101:19	84:22 88:10,11
75:21,23	108:24	80:7 81:6,7,11	104:12,16	89:11,13,15,24
76:10 147:25	capacity 8:11	82:2 83:10	106:21 111:14	90:1,3,6,15,19
155:21 156:22	62:17,22 63:4	85:8,13 91:3,6	116:12 120:16	90:20,22,24
bucket 11:8,11	63:5,6 141:22	92:16,20	124:5 127:8,17	91:1 92:4,9
11:23	capital 94:2,7,8	93:19,25 94:1	128:1 146:4	93:1,10,10
buckets 11:20	94:10,11,18,21	94:8,10,13,19	149:7,23	99:6,11,17,25
budget 15:13,14	149:25 150:1	95:3,21	150:7,12	99:25 100:2,4
15:16 91:10	car 39:22 134:3	103:22,24	caseloads	100:5 101:17
92:1 136:14,16	card 97:11	106:7,8 107:10	14:20 42:23	102:8 103:3
136:25,25	care 24:2 43:23	107:16 108:3,6	71:10 74:21	104:17,20
137:1,3 141:3	96:9 122:23	108:6,8,11	120:22 121:21	105:13,18,23
build 25:7	146:13 154:13	110:21 111:1,4	127:7,12,15	106:8,15,19,19
Building 4:15	154:14,16	112:12,14 115:3	cases 14:12,16	106:22,23
bulk 24:8 48:3	160:13	117:14 119:11,12	14:18,21,23,25	108:9 110:16
66:22 67:8	career 128:18	120:14,14	15:24,25 16:4	111:5,15,24
bunch 77:10	carry 16:1,10	125:22,24,25	16:6,16,20,24	112:2,7,24
burned 69:24	case 1:6 3:6 5:5	126:3,5 127:7	17:6,7,16,17,18	113:19,22 114:5
business	13:4 14:22	127:13 129:19	17:19 19:25	114:15,16,17
127:24	16:10 20:16,18	129:24 131:14	28:21 29:3,5	115:14 116:7,13
		131:21,22	29:14,19 31:9	116:21 117:3,17

118:8 119:4,13 119:21 120:5 120:10,18 126:2 128:3 129:14 130:3 131:9,22,24 132:1,3,20 134:10 137:12 137:17 138:11 138:22 148:18 149:13,14,25 150:1,5,8,13 153:13 156:18 156:20 157:1,7 157:9,10,19,21 157:23 catch 7:11 categories 136:17 140:23 140:24 142:2 155:15,17 categorize 140:21 category 80:17 cause 3:17 32:6 41:7,16,17 42:2 42:3 caused 106:4 causes 36:3 center 21:2 central 1:2 3:2 3:19 5:7 16:15 87:6,10 145:1 Centre 4:14 certain 3:17 15:17 107:11 certainly 16:21 18:22 20:13 29:23 31:4 33:20 55:1 61:13 72:4 75:1 76:21 93:11 96:19 106:2 CERTIFICATE 161:1 certification 58:12 59:4,6	59:15,19 60:1 certified 59:11 certify 161:4 Chad 110:9 111:11 111:24 chain 89:5,21 110:9 chair 48:17 49:1 137:12,12,13,16 137:17,25 chairing 138:5 challenge 81:17 challenged 41:25 117:12 challenges 32:25 60:16 challenging 42:2 chambers 67:21 88:16,24 change 19:15,15 19:17,18 20:3 20:6,15 76:7 88:10 94:17 107:19 121:17 125:20 154:22 changed 72:20 140:22 changes 94:17 153:25 chapter 151:24 charge 44:10 91:8 117:18 125:24 charged 8:13 36:19 39:1 107:7 117:2 159:12 charges 44:5 60:14 83:20 113:12 checked 16:9 101:11 checklist-type 128:18 Chief 73:1 children 60:1	chip 154:5 choose 114:4 chooses 94:12 Christmas 48:9 Christopher 9:23,24 Church 1:4 3:4 3:19 5:4 circuit 21:14 67:16 84:21 86:5 98:3 99:9 100:3,3 102:3,4,4,17,18 112:11 152:6,10 152:12,14 circuits 100:9,12 circulating 86:24 circumstance 30:4 circumstances 42:10 54:17 83:15,16,17 circumvent 20:14 citizen 22:2 53:23 54:1,2,3 city 4:10 9:25 96:22 105:17 105:20 117:23 124:11 146:16 civil 10:1,1 67:16 88:9 96:19,20 142:23 157:23 claim 42:13 clarified 111:24 Class 150:18,21 150:22 CLE 65:21 clean 110:2 clear 7:9 90:5 113:1 116:5,18 140:25 152:11 clerical 13:14 132:11,12 133:3 clerks 109:5 132:4,4,10	client 20:20 21:13,17,20 22:25 23:11,19 24:1,1,6,8,9,10 25:10,18 26:13 28:2,2,4,4,6,11 29:3 31:5 34:3 36:12,18 42:9 43:18 45:2,10 45:17 47:5,12 47:21 49:20 50:1,4,8,9,12 50:14 51:6,18 52:19 53:1,18 54:13 60:9 65:10 67:6 69:17 75:15,15 75:16,18 76:16 78:18 91:7 103:4 107:4 114:25 125:24 126:6,8,12,12 126:14 138:17 139:6 150:24 152:22 153:15 160:3 client's 20:6 23:22 30:16 45:1 107:20 120:5 138:19 138:21 client-centered 23:9 clients 8:13 10:9 10:11,14,21 13:13 16:16,19 18:20,21,22 20:4 21:8 22:11,15,17,23 22:24 23:1,7 23:21 26:6,19 27:8,15,18,22 27:25 28:7,9 28:11,18 31:17 32:25 39:15 40:1 43:19 44:2,3 56:15	60:22 61:3 69:20 70:3 71:11,25 74:3,8 74:12,12,17 75:22 77:3,4 78:1,2 84:7 90:12 91:17 92:10 96:1,2,3 99:15 106:6 107:20,22 117:12 120:7 136:8 148:13 153:25 close 82:9 123:13 126:2,4 126:7 152:23 152:24 closed 125:25 152:23 153:10 153:11 closer 11:5 closest 38:21 closet 25:22 closing 47:17 Clothing 136:7 Coalition 105:9 code 67:20 coded 110:16,21 110:25,25 collateral 117:16 117:25 collected 143:19 156:4 collecting 13:5 collection 143:17 college 9:12 colored 71:14 Columbia 4:16 4:21 15:15 87:5,6,16,18 101:4 136:22 145:5 column 64:20 columns 79:2 come 14:12,18 20:18 21:2
--	--	--	---	---

34:11 35:1 42:14 45:10 55:6 67:2 70:12 77:5 79:20 82:12 82:23 132:4 136:24 146:7 157:11 comes 124:15 131:21,22 132:8 133:3 138:23 comfortable 36:15 72:14 114:19 115:11 coming 11:10 14:21 39:6 46:21 49:16 87:4,10,16 125:18 143:3 148:18 commissioners 124:10,13,14,16 committing 39:11,12 common 108:6 135:3 146:25 communicate 22:11,16 23:8 26:5 27:8,21 77:2 communication 22:17 60:5 75:25 76:14 76:20 149:6 community 70:10 compared 110:18 compel 32:10 competency 33:19,20,22 34:5,7 77:6,9 competent 33:23 34:3,4 34:10,11 50:19 50:19,22 77:6	92:16,22 149:5 complain 64:14 complaint 73:7 82:21 147:1 complaints 32:22 121:9 146:24 complete 31:19 148:11 completely 17:11 34:13 63:7 complex 120:14 complexity 157:2,6 component 11:18 compromising 36:10 52:18 comptroller 137:4 concern 14:20 87:10 95:9 146:12 concerned 98:4 119:14 158:16 concerning 124:5,20 138:6 141:19 145:10,11 concerns 124:5 concluded 160:23 concludes 160:20 conclusion 126:3 condition 73:10 conduct 28:22 78:5 144:3 conducts 144:5 conference 26:11,15,20 138:3 147:15 confessed 36:23	confessing 36:24 confidence 26:4 confident 22:20 83:14 confidential 22:20 24:22 25:1,13,25 26:2,3,7,13,21 confidentiality 22:21 conflict 91:5,5,9 92:6 93:9 95:18 conflicts 74:11 75:21 91:11,13 91:13 146:9 confusion 140:21 consciously 55:1 consequences 18:19,25 19:1 53:14,18 54:14 117:16,25 conservative 64:4 141:8 conservatives 64:2 consider 45:16 112:21 122:11 122:14,17 152:9 consideration 38:3 63:10 157:9 considered 28:14 considering 49:20 122:12 constant 106:11 128:7 constantly 63:13 139:18 constitute 28:25	Constitution 70:17 constitutional 19:8,13 116:19 constraint 37:9 constraints 30:15 55:12 57:6 59:24 61:4 91:18 consult 43:11 50:1,12,13 54:4,10 55:15 55:20 consultants 57:7 consulted 36:25 55:18 56:6 Consulting 29:5 consuming 39:9 146:18 contact 25:21 28:15,18 42:13 contacted 17:23 119:15 contained 61:25 contempt 84:18 contention 142:6 continually 79:19 continuance 37:2,3 71:2 continuances 37:18 38:10 99:2,22,23 99:25 102:12 108:4 138:7 continue 69:4 79:25 96:4,5 96:8 121:7,24 128:10 continued 100:7 continues 121:8	122:2 continuing 19:22 continuously 22:24 contract 90:17 90:19,20,23 91:1,11 92:1,5 92:21 contracted 91:21 contracts 91:8 control 15:6,9 15:16,20 70:6 70:7 127:17 136:5,6,13 controlling 138:11 controls 15:7 133:14 conversation 24:17,21 99:14 128:12 138:6 152:6,9 conversations 72:13 86:22 144:14 158:14 158:20 conveyed 49:22 50:7 convictions 53:14 copy 87:20 129:17,23 cordial 88:21 corner 60:4 corners 23:5 corporate 41:23 correct 10:25 16:12 30:22 30:24 34:4 42:25 50:3 123:21 124:1 126:25 130:10 130:16 140:13 141:8 151:22 151:23 152:25
--	---	---	--	---

153:6,16	83:17,18 84:1	139:9,17 151:18	18:10 19:22	148:1 153:9
Corrections	86:18 88:12	151:22 152:2	23:14 38:25	date 5:2 20:11
126:16	90:10 98:14	153:11 154:5,7	44:5 45:4	21:2 38:4,5
correctly 50:2	99:22 103:15	154:7,25	53:14 67:17	107:6 126:8
64:25 131:8	104:2 115:7,19	161:16	83:2 85:11	153:2
148:5 156:9	116:5 119:8	courthouse	88:10,11	dated 86:10
corresponde...	124:13 131:20	24:11	105:13 125:24	dates 20:9
85:21,25 86:4	131:21,23 161:3	courtroom	142:13,21,25	35:25 81:11
Council 73:2	couple 17:7	20:24 21:1	156:18,20,23	91:7
councilmen	27:9 59:16	22:18,19	crisis 146:5	day 3:15 12:19
124:11	75:2 83:14	24:24 67:18	cross 2:3,3	18:7 22:17
counsel 4:14	84:18 90:25	85:3	47:11,16 138:4	24:18,21 28:7
5:25,25 7:3,4	116:15 122:6	courts 18:11,14	Crowell 1:16 2:2	29:15 39:22
7:5,18 18:13,17	125:9 130:23	18:15,25 19:5	3:12 5:3 6:1,6	40:2,2,3 47:1
18:24 19:23	course 90:21	19:5 20:22	6:11 49:17	48:4,5,5,5,6,6
19:25 20:8,17	124:18 149:20	35:18,20 79:4	109:24 123:8	48:7 60:19
74:5,7 83:5,7	court 1:1 3:1,18	116:20 138:20	160:21	65:13,17 79:17
84:6,9,23 85:1	4:19 5:6,22	138:20 139:10	Crowly 88:23	88:7 95:4
99:6 102:13	6:20,22 7:2	139:12 154:3	curious 154:24	96:25 97:11
105:10 113:3,6	13:11,12 19:3	cover 22:9	current 15:22	106:13 120:20
113:7 127:16	20:9,11 21:2,7	65:23 131:4	39:5 120:16	129:16,16
134:7 140:19	21:15,15 22:17	covered 121:6	149:7	134:14 140:10
151:8,12 161:8	23:2 24:18	covers 21:23	currently 12:12	152:10 154:20
161:11	28:12,13,14	64:24 106:1	16:6 33:22	156:3 160:8
counseling	38:20 39:21	Crawford 8:18	60:22 72:1	day-to-day 15:2
56:17	39:25 42:15	26:2 55:7	79:8,9,10	23:3 65:12
count 109:11	42:16 44:10	82:10 98:14	81:25 82:6	days 19:19
144:11	45:10,18,19	103:15 104:1	140:2,5,9	39:25 64:17
counties 8:16,18	48:5,7,11 53:9	crazy 76:23,24	149:12	65:25,25
15:9 20:2	55:9 59:13	create 78:25	custody 18:7	67:6,7 76:16
21:13 26:10	67:15,19 71:1,3	80:6 147:8	21:1 44:7,15	76:17,22 114:3
39:19 56:13	71:5 73:8 76:1	created 82:11	60:2 76:16	114:3 126:19
82:10,16	78:7,22 80:14	103:2 104:10	82:6 99:3	139:4
103:16 104:2	80:14 81:11,11	105:13 129:21	107:23,23	deadline 77:1
105:25 115:6	81:18 83:11	147:20,23	114:2 132:3	deadlines 73:5
116:15 131:10	85:7,17 88:9	creates 54:23	135:2	81:11
131:23 133:8	90:12 91:6	106:10	customs 138:8	deal 23:4 24:9
counting 17:18	97:3,22	creating 78:16	cut 123:4	24:11 52:4,8
county 14:16,17	100:21 101:6,7	87:18 102:21	cutting 23:5	52:20 58:3
14:18 25:3,12	101:9,10,18,18	creation 141:13		60:8 67:12,13
25:13,14,25	101:20 103:19	creative 41:19		117:23
26:2,3,14,19	105:2 110:4	credibility 80:4	D	dealing 59:25
38:18,19,21	114:23 126:13	credible 107:14	D 2:1 108:10	60:15 118:5
39:19,20,23	126:18 127:2	credit 114:3	142:3	deals 53:4 58:5
40:1 46:1 55:7	129:12,13	crimes 159:13	daily 79:3	113:11,14
55:7 72:18	133:5,11 134:3	criminal 8:13	data 7:23 141:13	death 93:18,24
79:1 82:10,14	134:22 135:2	14:4 17:23	143:9,17,19	93:25 94:13
			database 72:11	

94:15,24	8:10,11,16,19	104:12	130:5,11,24	142:7 157:6
December 1:18	8:23,24 9:3,6	denial 111:6	deputy 8:24 9:2	different 39:2
3:13 5:2	9:6,7,21 10:6,7	denied 37:3,12	9:6 17:1 58:23	40:16 51:24
decent 31:24	10:24 15:1	37:13 80:14	73:21 90:17	65:22,23
decide 54:22	16:14 17:1,2	91:10,19,25	91:8 95:18	74:14 79:1
decided 16:16	21:4,5 48:6	101:5,6,9	110:11 130:17	86:8 97:6,7,13
25:6 73:7	58:24 65:9	104:25 111:3,5	131:16 137:15	101:1 108:1
74:23 116:19	70:11,18 80:12	134:18 135:8	145:3	128:17 131:4
116:20 127:10	83:11 89:9	135:14,15,20	describe 9:5	136:24 144:8
151:24	90:6 93:8	136:7 151:17,21	17:21 145:13	150:18 151:2
deciding 16:19	96:18,20,23	152:2	deserve 119:23	differently 81:9
decision 11:5	110:10,11 112:12	Dent 8:18 25:25	150:14,14 154:1	difficult 7:2
21:7 72:21	114:22 123:25	103:15 104:2	deserved 74:3	23:11 34:22
73:17 75:1	128:19 129:8	131:23	120:15	35:1 56:14
77:15,18 87:14	129:23 130:6	deny 15:17	deserves 51:6,7	60:5 70:12
97:2 111:22	130:9,9,15,20	101:12 134:5	desk 138:18	71:12 81:10
127:2,2 145:2	136:23 137:2	135:22 136:2	despite 127:25	103:16,18
145:6 147:20	137:15 141:3	154:3	details 36:16	160:14
151:15	142:17 143:1	denying 134:4	73:4	difficulties 36:5
decline 121:9	145:12,16,17,18	department	detention 58:5	difficulty 55:8
decreased	160:7,9,15	126:16 144:7	58:9,11 59:4	67:12,13 68:5
125:2 130:12	defenders 4:12	departure	determination	86:21 121:3
decreasing	76:4,12 118:11	144:15 145:12	110:23 111:3,6	diligence 75:25
121:23	118:12 131:11	depending	132:6 133:1,2	76:13
dedicate 43:8	142:21 145:17	12:19 65:24	133:12	diligent 77:2
dedicated	147:22 155:23	127:10 150:2	determine	149:5
127:2	159:10,10,18	150:19	30:19 33:7	dire 47:18
deep 47:20	160:11	depends 17:25	41:15 72:14	direct 2:2 47:11
defend 70:17	defense 14:4	29:2,10 72:19	101:20 125:12	47:16
defendant	36:20 73:9	137:18	131:25	direction 49:25
17:22,25	142:21 143:1	depose 135:25	determined	161:7
20:16,21 95:3	156:23	deposed 6:16	111:7 132:2	director 17:1
111:7,16 112:8	define 125:22	30:13,13 31:1	151:7,11	90:16,16,17
112:13,16,19,20	definitely 35:7	deposes 6:8	determining	91:8 95:8,19
113:23 114:4,6	82:3	deposition 1:16	41:16 51:20	131:16 145:3
114:8,13 115:1	degree 123:24	3:12 5:3,8 6:1	110:17,21	disadvantage
115:19,21	141:19,19	6:19,21 7:16	developing	51:25
126:20 136:2	148:11	7:24 8:2,5	107:10 134:14	disadvantages
154:17	degrees 123:23	16:23 30:20	development	117:13
defendants 1:8	delay 16:19 18:4	31:3 65:11	60:7 72:16	disappears
3:8,21 4:7 5:21	36:2	78:15 135:24	devote 35:15	22:6
6:1 7:4 13:13	delegate 132:5	136:9,19,23	37:4 52:21	Disciplinary
18:16,21 19:8	Delphi 141:17	160:21,23	60:17 61:10	73:2
39:2 46:8	142:20 143:9	161:5,9	dictate 10:21	discovery 21:14
113:2,6 117:2	143:20,21,25	depositions	difference	31:8,11,15,18
117:14	155:11	29:4 30:10	159:11	31:20,20,21
defender 4:13	demands	32:23 47:9	differences	32:5,5,9,14,15

47:7 75:11,12 75:18 78:19 107:11 139:21 discrepancy 134:19 discretion 15:2 135:16 discuss 89:24 98:7 discussed 7:19 discussing 158:1 discussion 105:3 135:12 discussions 14:23 90:16 dismiss 41:7,11 dismissed 42:17 48:4 dispose 41:19 disposed 90:21 disposition 106:9 115:18 dispositions 20:4 disregarded 89:3 distinguish 12:7 131:2 distinguishing 11:24 distribute 15:9 district 1:1,1 3:1,1 3:18,18 5:6,6 8:10,19,22,24 9:2,6 10:6,7 10:24 15:1 16:14 17:1,2 48:6 58:23 89:9 90:6 110:10,11 118:10 125:23 126:1 129:8 130:6,8 130:15,20 131:9 132:23 136:22 137:2 137:15 138:8	139:7 144:7,9 145:16,16,17,18 147:21 151:17 151:18,19 district's 140:1 division 1:2 3:2 3:19 5:7 57:20 65:15 90:16 92:6 94:2,7,18 94:20,22 144:5 docket 11:15 16:6,10 39:5 60:23 80:21 81:1,20 138:9 document 53:8 61:24 62:2,13 62:17 78:6,8 78:15 85:16,18 85:23 86:24 95:5 97:23 100:14,16 103:8 104:6,14 110:3,5,14 154:24 155:1,6 documents 7:20,22 100:10 147:19 doing 11:10 12:6 12:10 20:14 23:3 32:24 33:2 40:20 48:15 60:20 63:19,20 76:9 77:10,12 86:14 87:3 95:23 96:6 97:12 101:4 107:13 115:7 118:13 120:18,24 129:15 154:12 158:25 160:1 dollar 94:2 domestic 41:22 45:11 117:20 door 26:18,21 67:2 125:18	double 71:22 72:6 downside 117:5 downsides 116:25 117:2 dozen 132:17 132:24 drafted 100:20 147:7 dramatic 127:18 draw 141:1 drive 38:20,23 39:20 90:10 123:5 134:3 160:15,17 Drive-In 9:12 driving 40:4 dropped 79:13 drops 13:22,24 drug 40:9 46:2 56:17 due 41:7 101:11 duties 23:3 duty 76:13,14 DWI 112:15 115:20 DYS 60:2	earlier 35:24 38:16 80:20 100:23 106:3 124:6,7,21 134:21 135:7 135:21 141:6 142:6 152:21 early 35:16 36:3 98:5 East 3:16 5:9 Eastern 151:19 easy 93:25 eat 134:2 economy 125:1 educate 129:13 educating 129:9 education 21:25 effect 41:25 60:15 69:6 73:6 115:5 116:14 129:6 effective 22:16 98:20 107:1 120:25 121:4 127:16 effectively 21:20 23:7 27:8,22 35:11 36:6,13 39:15 47:3 51:14 52:13 59:18 61:8 71:24 102:8 120:5 140:15 efficient 41:20 effort 43:17 52:7 efforts 127:25 eight 14:11 28:7 38:22 either 66:21 78:23 123:3 143:1 elaborate 6:24 elected 86:17	eleventh 65:3 eligible 121:4 133:15 Ellen 90:17 95:9,16,21 110:15 111:13 158:4,9,15 Elmer 90:17 91:8,24 95:18 email 86:13 114:24 employed 161:8 161:11 employee 64:15 65:12 161:10 employees 12:22 56:22 64:16 144:10 employment 9:5 10:4 65:20 encompasses 8:16 encourage 21:23 22:7 57:20 67:2 133:22 encouraged 136:21 ended 48:15 ends 34:4 43:16 49:12 50:8 60:8 109:19 138:18 enforcement 42:4 English 54:21 enjoy 96:20 ensure 10:9 74:21 93:20 enter 78:18 91:4 111:4,24,25 116:7,8 126:7 entered 103:12 111:1 119:11 entering 14:22
--	--	--	---	---

16:19 18:11,12 89:17 119:20 119:22 127:13 127:13 entire 102:25 144:12 entitled 126:22 equally 121:12 121:16 Eric 123:15 especially 24:6 39:24 83:19 117:11 134:10 146:15 establish 157:6 estimate 64:2 et 1:4,7 3:4,7,19 3:20 5:4,5 ethical 74:2,5 74:20,22 75:21 76:11 81:14 97:8,17 97:19 104:18 154:13,15 ethically 77:20 78:1 evaluate 35:22 36:18 53:18 84:4 evaluated 29:11 33:16,22 47:6 47:8 evaluating 35:21 evening 123:11 123:12,12 event 48:10 eventually 73:8 138:18 everybody 41:18 76:5 116:17 121:14 everyday 96:12 evidence 13:5 22:3 23:16,17 23:24 29:4,9 42:16 43:10,11	58:7 150:25 evidentiary 32:21 exact 63:3 73:4 exactly 97:5 exam 47:11 examination 2:2,3,3,4 155:7 158:1 examinations 47:11,16 examined 3:13 6:7 example 48:1 92:19 112:14 114:24 115:20 129:2,11,12 134:11 examples 41:21 46:1 83:8 exceed 136:23 Excel 78:25 excellent 125:9 exception 51:10 84:24 126:5 excess 105:22 excessive 73:11 104:16 exchange 90:2 exciting 32:24 Exclusively 156:19,20 exhibit 2:7,7,8,8 2:9,9,10 53:9 61:21 78:7 85:17,23,24 100:15 103:9 104:5 141:2 147:4,13,23 158:3 exhibits 147:3 exist 29:9 128:19 existing 68:2 75:22 104:20 exists 22:3,4 54:9	exit 144:3,5 expect 7:19 64:16 75:13 84:3,4 156:14 expectations 128:16 expected 39:25 102:23 112:10 159:23 expecting 64:13 expects 63:9 64:7 expedite 138:10 138:11 expense 12:4 148:14 experience 9:5 13:17,20 14:2 14:3,8 17:1 27:13 31:24 32:3 40:14 48:24 49:2 50:23 51:17 51:20 56:10 61:9 66:12,16 68:15 85:11 121:13 122:1 124:21 128:8 128:23 131:12 131:20 137:20 138:5 142:8,13 143:8,13,22 150:3 experienced 27:15 33:6 58:23,25 59:8 61:11 63:18,22 66:14 106:20 118:23 137:24 142:25,25 155:25 156:1 156:16,17 expert 33:8,12 33:17 34:2,11 34:23 35:5,10 35:11,11,19,25	36:4,13,18,25 37:4,5,14,16 54:5 55:21 61:3 135:8,10 expertise 124:20 131:11 experts 29:5,6 34:6,14,14,15 34:15,15,16,18 34:24 35:3,16 35:25 36:6 43:12 47:9 107:11 131:1,2,3 131:3,5,6 explain 23:15 34:12 78:16 110:16 111:20 115:13 155:11 explaining 87:13 explanation 37:14 91:20 expressed 87:9 expressly 6:4 extent 81:2 95:15 140:9 141:15 144:13 external 133:13 extreme 46:1 extremely 128:5 eye 72:12 eyeopener 74:13 eyes 97:16	44:5 63:13 64:11 69:16 71:14 77:25 93:4,17 96:13 97:16 107:25 119:19 134:17 143:17,17 155:25 158:20 factor 35:2 51:24 160:5,6 factors 35:4 150:3 facts 45:1 51:23 fade 153:22 fades 127:23 fading 154:8,11 154:19 fail 66:11 154:4 fails 58:9 fair 10:22 52:24 75:22 96:3 117:6 124:25 146:18 148:7 fairly 64:3 83:14 141:8 fall 124:2 familiar 72:21 141:12 145:25 familiarized 65:14 families 13:13 family 44:7 45:4 48:9 88:9 far 27:5 60:4 63:3 73:11 90:8 105:24 124:4 farce 126:24 faster 82:17 120:2 fastest 44:15 fault 11:19 71:6 favorable 29:7 29:8 98:16 136:4 fax 133:4 faxed 18:3
F				
			face-to-face 60:7 facilitate 19:25 154:2 facilities 39:2 56:15 124:18 facing 53:19 61:4 93:18 124:19 fact 14:5 34:7	

fear 136:25	152:25 153:10	first 25:19 28:14	78:4 103:1	function 8:12
February 109:4	153:11	33:22 42:8	following-up	107:25
feedback 132:9	filed 32:20	47:4 48:20	12:4	functional 34:13
feel 25:20 33:9	80:13 94:14,21	49:1 50:1,6	follows 40:15	funding 37:9
42:9 76:6	100:23 101:8	52:3 54:21	fool 119:24	124:15
80:1 88:19	101:22 102:3	58:8 65:20	foolish 136:3	funds 37:12
104:11 114:18	103:23 104:23	67:23 70:18	football 36:22	135:9,16,20
115:11 145:21	105:3,6,7	77:7 79:17	force 52:8	136:15
146:13 150:7	134:16 152:1,2	80:9 81:7 82:4	forced 35:17	further 36:15
160:3	152:10	85:22 90:25	forcing 43:14	108:3 123:9
feels 65:24	files 96:4 153:14	92:20,24	foregoing 161:5	138:19,20
120:3	filing 13:8 40:15	93:12,14,23	forever 100:4	152:17 153:17
felonies 45:23	41:7,10 44:22	94:11,11,23	form 53:25 91:5	160:19 161:10
45:24,24 46:4	102:1,21	95:3 96:15	91:5 97:10	furthest 38:19
61:7 83:21	filings 73:6	102:20 107:7	formal 16:13	38:21
106:21 108:10	fill 18:3 20:25	111:10 125:8,8	former 136:22	
108:14 114:5	33:6 108:16	129:16,16	forms 95:18	G
114:20 116:13	109:10 123:19	137:21 138:9,9	forth 52:7 73:3	gap 33:6 74:4
149:24 150:12	158:23 159:3	147:6 152:1	98:9	gaps 123:19
150:17 157:19	filled 91:6	155:14,15	fortunate 159:12	Gathering 29:8
157:20	finality 93:22	158:3	forward 43:13	general 4:14
felony 48:20	finally 134:16	first-year 119:1	134:10 140:25	7:18 36:16
60:10 82:2	financially	firsthand 143:13	four 14:2 39:4	73:13 86:2
149:24 150:21	161:12	fiscal 17:6 62:10	65:25 72:6	140:19
150:22 151:4	find 35:24 43:11	64:24 141:3	74:16,18	General's 4:9
157:3,14	56:15 57:22	Fisher 96:25	107:25 108:5	159:19
felt 53:1 141:6	65:3 66:7	97:2	108:7,15,20	generalities
fend 146:14	68:6 90:18	fit 31:6	118:25 125:8	47:24
fewer 69:2	98:8	five 9:8 14:2	125:20,21	generally 10:19
122:8,8	fine 12:1 46:3	39:4,25 49:6	128:20 153:14	10:20 17:21
field 34:15	51:9 114:10	102:14 108:1,5	fourth 60:10	21:12 24:14
131:16	149:19,19	108:7,15	frame 107:17	54:4,16 58:22
fifth 60:10	157:22	123:13 125:8	free 80:1	59:2 60:1,3
fight 70:16 96:8	fined 46:9	130:21 156:2	freedom 44:4,6	92:17 93:19
figure 95:22	fingerprint	five-minute	70:6	113:20 122:15
figured 42:1	34:15	140:3,16	frequent 33:14	128:1 132:7
file 18:5 31:11,20	finish 7:1,13	flip 61:23 62:3	frequently	134:4 135:3,13
31:23 32:9	151:5	focus 116:12	26:16 31:8,11	136:4,10
40:5,13,23	finished 48:3	120:13	33:7 37:17	137:14 138:2
41:3,5 42:19	Finishing 103:10	focusing 75:20	40:5 53:6	159:9
44:18,23,24	fire 70:15	follow 38:2	55:21 69:1	generating
45:17 73:7	firearm 117:21	follow-up	Friday 48:8,9	99:15
78:19 81:18	117:22	133:25,25	49:7,9	generous 28:19
94:12,25 95:4	fired 73:12	153:18	friends 44:7	geographic
101:18 103:21	firing 11:9	followed 80:4	159:17	92:2
103:21 126:7	firm 10:2	147:18	front 133:4	geography
151:24 152:23	firms 105:17,22	following 74:8	fully 63:11	131:10

getting 11:13 21:14 27:19 29:23 32:25 34:22 37:1 42:1 43:16 47:19 52:18 53:1 55:6,9 57:22,24 59:3 66:6 68:19 69:1 79:24 100:5 108:2 108:23,24 119:10 121:7,20 123:13 127:19 127:21,22	54:25 58:11 59:7 65:21 66:9 67:7 69:5 71:17 78:24 84:4 88:3,13 90:12 94:13,17 98:15 106:6,22 107:23 108:13 109:17 116:16 117:20 120:2 122:2 125:11 126:4 127:24 132:6 136:3 137:10,10,14 138:1,24 144:21 150:4 153:5 156:8,9 159:16,16,16	100:14 103:8 108:12,15 109:18,21 110:2 112:13 113:23 116:2,18 119:17 120:6 121:13,18,19,21 121:22 125:12 126:9 127:25 128:1,10 129:4 132:8,8 133:5 133:6,7 134:5 135:6 138:20 138:24 142:16 148:19,25 151:4 152:5 154:9,23 155:10 156:3 157:9,10 159:15,21 160:9,9,16	granting 99:22 great 7:15 23:3 34:11 48:24 51:25 55:8 60:8 67:12,13 68:23 115:22 125:10 GREENE 161:3 Greg 100:21 104:10 146:16 147:10,11,24 158:5 Greitens 5:19 123:15 ground 6:19 group 141:17 142:21 143:9 143:20,21 155:11,22 156:5,8 grow 40:19 69:4 growing 22:24 grown 79:13,19 grows 82:24 122:6 guard 26:18 39:12 guess 9:22 10:13 11:24 21:24 31:24 33:10 50:5 62:10 83:18 92:5 128:14 130:1 131:7,16 132:17 141:19 147:21 guessing 100:20 guidance 104:11 129:18 147:12 guide 129:19,24 guideline 76:19 guidelines 10:10,12,20 61:14,15,16 71:21 76:15	129:15,17,18 guilt 19:2 guilty 18:23 34:1 44:16,16 49:19 49:24 50:9,12 50:14,25 51:14 52:14 54:1 83:7,15 117:16 126:3 150:25 guy 36:22 94:16 guys 88:17
give 20:24 21:6 24:15 47:24 63:3 77:7 81:7 90:15 92:8,9 95:17,20 108:4 114:23 117:6 120:14 128:25 129:18 129:23 131:14 132:9 134:10 151:3 158:6,23	goal 23:9,10 68:9 goes 65:4 67:15 94:11 107:8 126:6,14 138:24 139:20 going 6:25 8:21 9:10 15:19 23:23 28:6 31:25 32:14 34:2 35:6 36:1 36:10 39:21,21 40:1 41:20,22 41:23 43:4,14 45:23,25 46:4 48:16 49:11,14 50:1 51:7 53:8 55:1 58:8,8 59:12 60:1,2,4 61:21 65:16 68:10 70:5,6 70:8,8 71:20 71:21 75:10 76:4 78:1,2,3 78:6,7 81:13 85:16 87:3 91:16 92:9,10 94:1 97:21	gonna 121:18 good 6:11,12 7:14 19:5 32:24,25 49:5 56:13 68:20 95:25 109:16 123:11 125:6 126:17 129:1 136:8 145:15 gotten 27:9,12 68:17,18,21 135:10 146:21 government 142:23 Governor 5:19 123:15 GPS 134:13 graduate 9:16 graduates 69:2 108:25 grand 41:16,17 42:5,5 grant 102:5 108:3 granted 152:12	granting 99:22 great 7:15 23:3 34:11 48:24 51:25 55:8 60:8 67:12,13 68:23 115:22 125:10 GREENE 161:3 Greg 100:21 104:10 146:16 147:10,11,24 158:5 Greitens 5:19 123:15 ground 6:19 group 141:17 142:21 143:9 143:20,21 155:11,22 156:5,8 grow 40:19 69:4 growing 22:24 grown 79:13,19 grows 82:24 122:6 guard 26:18 39:12 guess 9:22 10:13 11:24 21:24 31:24 33:10 50:5 62:10 83:18 92:5 128:14 130:1 131:7,16 132:17 141:19 147:21 guessing 100:20 guidance 104:11 129:18 147:12 guide 129:19,24 guideline 76:19 guidelines 10:10,12,20 61:14,15,16 71:21 76:15	half 48:24 90:20,20 132:17,24 138:10 155:23 155:23 halfway 56:12 hallway 22:18 ham 41:17 hampered 30:1 36:12 47:21 hand 53:8 61:21 78:6 85:16 141:12 143:16 154:24 handful 123:16 handle 17:5 40:7,8 57:16 59:14 60:18 61:7,20 72:15 73:13 77:20 78:3 81:13,17 88:10 92:3,22 93:1,3 94:3,7 94:10,23 102:8 122:22 142:11,12 150:8,10 handled 17:6 71:16,16 93:8 105:14 handling 15:24 38:13 81:8

90:10 92:16 106:18 131:20 hands-on 66:5 66:16 67:9 hanging 44:10 happen 18:20 41:24 42:3,11 45:12 48:16 83:25 95:14 103:20 114:1,11 120:6,12,17,17 127:25 happened 72:23 74:4 83:9 88:15 90:13 102:17 107:12 116:3 happening 120:10 128:6 happens 18:18 19:22 21:18 46:9 83:2 84:1 137:7 happy 89:23 harassing 65:18 145:23 harassment 65:14 hard 25:17 51:8 52:22 72:1,7 77:2 122:18 150:1 Harrisonville 9:13,21 hate 148:16 hated 158:25 Hazelton 10:2 HB215 111:13 head 6:24,25 79:10 152:24 health 21:25 33:13,15,18 131:3,5 hear 25:19 heard 25:11 64:25 152:21 hearing 18:13	37:24 41:15 42:15 56:8 58:12 59:4,4 59:6,15 60:3 81:12 101:12,15 102:4,19 105:1 107:13 126:8 126:10,19,20 126:22,23 153:2,5 hearings 18:14 19:9 21:11 32:21 59:19 83:5 hears 41:18 heart 124:22 Hedrick 87:24 87:25 88:1,6,6 88:8 held 5:8 46:8 60:2 help 43:17 52:9 56:16 68:8 69:22 70:2,16 95:20 105:18 111:14 128:15 146:17,19 159:12 helpful 145:22 helping 12:15,16 HERRINGTON 4:4 hey 67:3 87:21 137:8 hi 153:11 Hickle 89:16,20 89:24,25 hid 25:23 high 4:9 27:17 39:24 68:16 68:19 69:3 106:3,5 128:5 132:19 156:7,11 higher 12:14 68:22 106:20 112:3 127:6 150:17	highest 13:20 13:21 127:7 Hillman 86:13 86:16,20,23 hinder 148:19 hindered 54:13 Hinkebein 11:5 72:21,25 73:15 74:3,10 74:16,24 75:5 75:20 76:7 77:15,18,22 97:2,16 127:1,4 127:5,10,15 147:20 151:15 154:20 hinted 101:13 hire 33:16 35:2 35:5 63:12 70:1 122:4 128:9 134:7 hired 64:24 65:1,5 68:14 69:1 84:5,9 89:9 109:2,6 124:2 125:4 hirer 37:10 hiring 11:9 29:6 63:13 65:2,5 106:13 122:11 Historically 108:18 history 45:1,4 140:2 141:18 hold 14:10 22:4 135:12 holding 84:17 holes 43:10 holidays 64:12 home 69:15 homeless 56:12 homes 56:12 honestly 45:15 88:7 122:9 hope 153:25 hoped 116:11 hopefully 7:9	56:17 65:3 144:22 horizontal 107:5 host 22:7 23:18 24:5 34:14 107:8,15 hour 22:25 28:1 28:6 38:19 39:4,22 40:1 90:11 159:25 hours 3:14 29:15 39:4 40:2,2 47:1 60:17 68:12 90:12 93:22 93:25 140:10 141:23 149:3 150:23 159:23 160:5 House 111:23 116:11 hover 77:8 how-to 129:19 129:24 HR 65:15 144:5 144:7,9,9,10 huge 77:8 92:4 106:11 117:24 117:24 human 144:23 hunch 119:5,6 119:18 hundred 17:7 55:3 60:17 93:25 hundreds 38:13 74:18 hunt 117:22 hunting 117:21 hurt 37:6,7 hypo 148:16 hypothetical 156:25 hypothetically 148:20 <hr/> I <hr/>	idea 61:7 75:7 76:22 96:22 107:22 115:15 129:4,20 ideal 22:19 143:6 ideally 24:22 30:25 40:20 107:4 identified 155:16 identify 67:5 155:15 iffy 151:1 ignored 84:14 ignoring 16:22 Ill 118:21,23 imagine 143:2 immigrant 54:11 54:19 55:4 immigrants 53:21 immigration 22:2 53:10,14 53:18 54:7,14 impact 32:18 34:17 35:10 39:24 42:18 44:25 55:25 57:6 59:17 68:2,23 73:17 73:20 106:10 118:2 157:3 impacted 30:16 34:21 44:5 75:1 117:18 impacts 56:7 60:11 61:10 93:10 128:7 impedes 25:19 35:2 implement 66:6 implemented 78:20 implicated 113:12 117:3 Implying 158:23
--	--	--	---	---

important 21:24 23:6,20 51:20 67:11 137:22	independently 111:7	inherited 30:7,8 30:8,9	internships 9:18 96:17	75:16 77:5 86:23 101:10
importantly 92:2 97:15 128:6 154:16	indicated 77:19 83:11 85:4 86:8 89:25 91:12 94:16 158:20,22	initial 24:17 128:22	interpretation 81:5 133:19	106:13 112:2 117:10 127:16 127:18 158:18 159:20 160:12
impose 115:14	indicating 140:8	initially 23:13 37:13	intervene 53:6	issued 102:6
imposed 16:15 16:17 113:19	indict 41:17	initiated 98:1	intervened 52:25	issues 11:4 22:2 34:5 38:9 40:10,13 41:7 41:13 55:5 67:25 86:2
imposition 112:16	indicted 42:5	initiating 27:20	interview 63:14 125:12 128:22 136:3,12	items 15:16 IV 53:16 76:1 131:19
impossible 28:2 66:7	indictment 32:6 150:21,22	inmate 39:12	interviewed 50:17	
improved 125:1	indictments 41:14	innocence 19:2	interviewing 13:5 29:7	J
in-house 66:6	indigency 110:17 110:21 111:6 133:2	instance 55:3 85:3 103:2	interviews 106:14 122:19 144:3,6	Jackie 7:18 87:21 158:5
inability 36:2	indigent 17:22 18:16,21,22 111:7,15 112:7 135:1	instances 39:3 53:4 60:6 75:2 146:15	introduce 5:13	Jacobs 89:7,10 89:24 90:3,4 92:20
inadvertent 19:21,24	individual 17:25 20:10 38:3 103:22 114:25 120:1 134:11 144:2 154:6	instant 122:21	invested 72:3	Jacqueline 4:13 5:20
inadvertently 19:14	individually 62:1	instituted 148:12	investigate 30:1 40:12 42:13 44:25 134:19	Jacqueline.S... 4:17
inappropriate 126:21	individuals 56:25	instructed 143:5	investigated 50:16	jail 13:11 18:1,6 20:19 22:22 24:12,13,17,25 25:2,3 26:1 28:4 38:20 39:22 43:21 43:22 44:11 67:20 69:17 69:18 76:22 80:5,9 81:8 82:14,16 83:19 96:5 98:4 112:24 113:12 113:14,16,24 114:12 115:9,10 115:14,16 116:3 116:6,18,22 118:5 119:8,10 119:14,16 135:6 139:20 160:4
incentive 132:25	ineffective 74:5 74:6 151:7,11	instruction 138:3	investigating 13:4 29:3	jails 18:2 28:3
incident 135:14	inevitably 51:7	instructs 7:5	investigation 28:23 29:1,18 30:17 47:8	
inclined 93:13 115:23	inexperience 53:3	insulated 25:9	investigator 136:12	
include 12:13 28:12	inexperienced 51:25 52:12	intake 21:22 53:21,23 128:11,20	investigators 13:3,7 71:23 72:4	
included 80:16 113:14	inform 42:10 79:21	intakes 13:12	involve 58:5	
includes 80:21	informal 16:14 31:22 144:14	intelligent 119:24	involved 37:5 57:22,23,24 58:9,10 59:3 115:15	
including 8:17 12:17,21 156:4 158:4	Informally 144:5	intended 116:5	irregular 23:21	
income 123:2 133:23,24	information 21:19 22:5 32:7 79:2 91:6 128:21	intention 103:4	issue 27:3 33:13,15,18 39:13 54:24 55:9 56:9,11 59:25 67:13 68:25 69:2	
incoming 106:24	informed 35:18	intentionally 69:5		
increase 128:3		interest 20:6 74:11 75:22 138:21,22 161:12		
increases 82:15		interested 93:6		
increments 140:3,16		interfere 144:6		
independent 47:7 68:10 110:7 133:13 133:20 134:9		interim 38:13		
		intern 9:20		
		internal 72:10		
		internship 9:23 96:18,19		

44:11 139:19	126:18 132:2	juvenile 57:16	125:11 129:24	73:24 74:1,15
Jefferson 4:10	138:24 139:18	57:18,20,25	131:4,18 132:5	74:17,23 75:17
Jenna 3:17 4:20	152:4,6 153:12	58:14,17,20	134:8 138:1	75:23 76:17
5:10 6:2 161:4	154:9 160:8	59:10,12 60:6	155:20 157:14	77:9,10 78:19
job 13:3,6 48:24	judges 19:24	juveniles 58:2	158:15	79:4,10,16,18
70:4,13 71:8	20:2,6 38:1,8	59:18	kinds 29:18	82:8,21,22
73:22 76:10	70:9 77:24		39:10 41:2,5	83:6,8,13 84:1
95:12,25	78:11 79:3	K	47:2,25 65:9	84:8 85:2,9
96:13 97:6,7	80:2,3,5,8,10	Kansas 9:25	81:22,23	87:2 88:4,7
97:12,13	80:11,22 83:4	105:16,20	106:4 113:18	88:23 91:25
122:25 123:6	83:9,12,12	146:16	117:2	91:25 92:4,8
jobs 13:14 77:16	84:12,15	Kathy 137:4	Kirksville 9:13	92:9,25 93:18
Joel 90:17 91:7	85:22 86:1,5	keep 9:10 19:6	knew 69:16	93:19,23,23
91:24 95:18	88:11,18 89:3	38:14 72:12	90:22	93:24 94:2
158:5	89:15 98:17	90:4,6 92:7	know 7:11 10:15	95:1,2,2,22
John 152:7	99:8,21 100:3	92:20 95:23	10:17,18 15:10	97:11 98:25
join 69:8,10	100:24 110:12	155:16,18	16:15 17:9	99:17 100:7
96:15	111:14,25 112:4	keeping 140:10	19:13,16 20:19	102:5 103:19
joke 41:17 93:14	114:18 118:7	keeps 159:8	22:1,5,18 23:4	103:21,24,25
joked 99:14	122:23 124:6	kept 134:14	23:11,12,24	104:3 105:3,5
judge 14:22	127:23 138:13	155:19	24:3,5,7,14,18	105:9 106:11
19:15,17 20:3	145:7 151:16	Kevin 86:13,16	24:19 25:17	106:13 107:6,9
20:3,6,15 21:3	160:10	86:19 88:22	26:1 28:7	107:10,12,21
45:22 46:2	judgment 71:14	key 30:6	29:11 31:25	107:22 108:11
47:13,14 67:21	judgments	kind 7:19 11:7	32:8 34:3,10	108:13,14
71:1,2 79:1 81:3	122:21	13:9 20:20	34:14 35:24	110:20 112:6,17
81:5,15,16 82:1	judicial 67:16	22:1 29:10	36:16 38:4	112:18 113:14
82:13 85:5	84:21 100:9	33:21 37:2	40:2,3 42:1	115:11,22,24
87:24,24 88:5	102:17 129:25	38:14 41:8,18	43:10,13,14,15	117:7,17,24
88:5,6,8,9,9,11	judicially 151:6	42:9 43:24	43:17 45:2,6	118:15,16
88:11,14,16	151:11	44:8,24 47:5	45:18 51:4,8	119:22,24
89:1,1,16,20	July 62:9	48:19 52:7	51:17,22	121:3,12,12
89:24,25	jump 110:2	57:18,20 65:11	52:22 54:19	122:6,18,19,21
90:13 98:2,3,7	June 62:9	65:14,17 67:4	54:21 55:3	122:24,25
98:11,12,13,17	jurisdiction	67:5,7,9 69:18	56:1,2,3,16,19	123:1,17 124:17
99:8,9,21	34:24 38:24	70:11 71:4	56:19 57:10	124:18 125:4
102:5,11,18	54:2 122:23	73:13 74:15,24	58:1 59:5	126:12 128:2
103:12,23	126:13,19	75:9,19 76:2	60:9,17 61:9	128:17,17 129:1
105:2 108:3	128:4 138:14	80:4 81:9	61:17 63:13,18	129:1,3,7,7,10
110:17,21 111:4	jurisdictions	82:15,24	63:20 64:8,15	129:11 132:8
111:6,16 112:8	41:14 45:23	86:14 88:20	65:18 66:8	133:8,18,23
112:12,21 115:1	jurors 48:12	88:24 89:14	67:14,19,22	133:24 134:2
115:7,9,14,17	jury 37:8 41:16	91:6 93:14	67:23 69:2	134:4,5,8
115:22,25	41:17 42:5,5	95:13 99:13	69:20,23	135:1,4 136:8
116:6 119:3,17	47:14,14	100:4 111:23	70:9,16 71:15	137:25 138:3,3
119:18,19,24	132:20	114:20,21 115:4	72:7,14,18	138:18,24
120:3 121:10	justice 96:4	116:16 122:21	73:15,16,22	140:17 141:9

142:9 143:2	54:7 67:14	102:12 116:2	102:9,15	look 33:14,23
146:15 147:9	70:15 80:7	Leon 158:5	136:17	75:10 76:11
147:16,24	96:18 105:17	let's 9:10 28:13	listened 73:14	77:6 89:4
148:1,3 149:2	105:22 108:25	49:23 72:20	lists 72:12	97:13 100:25
149:3,21,22	109:5 123:21	86:7,9 88:20	literally 119:9	104:5 110:13
149:25 150:7	133:17 139:4	112:14 115:20	litigate 41:13	110:15 149:4,6
150:8,12 151:2	141:19 147:16	148:17 150:17	43:21	150:9 152:7
151:4 152:3	148:17,21	150:24	litigation 3:15	157:1 158:3,21
153:7,24	lawful 6:7	letter 78:11	4:20,24 5:9	looked 74:16
154:8,17	lawyer 97:9	84:13,15	5:12 10:1 65:17	79:11 112:3
155:24 158:14	lawyers 52:12	145:10	105:18	looking 48:25
158:16,17,21	61:4 97:18	letters 82:20,21	little 16:3,23	96:14 122:25
159:15,20,24	laying 6:18	151:15	20:22 34:24	123:5,7 130:13
160:1,8,12,14	lead 129:11	letting 86:14	43:25 49:2	142:19 147:6
knowing 30:25	leads 29:3 96:7	level 13:18 32:3	63:17 64:16	150:13
47:12 48:16	lean 134:3	40:8 58:10	82:17 105:3	looks 49:25
67:14 81:16	learn 40:19	92:7,8 106:20	110:2 117:19	85:5 86:1
107:13	138:1	122:1 124:21	127:9 132:18	100:20
knowledge	learning 65:17	131:6 149:12	144:22 145:15	loose 114:21
56:10 83:24	65:18 137:25	150:3	live 45:2 96:21	lose 64:9 70:14
144:13	leave 28:13 68:1	levels 71:10	97:12 134:1	76:9 97:14
known 31:2	93:20 106:17	128:16	lived 45:3	106:13 107:18
56:24	121:8	license 97:15	lives 117:23	107:18
L	leaves 106:15	108:22,23,24	living 8:9 134:15	lost 35:5 44:17
lack 30:1,17	108:17	109:2,3 122:18	LLP 4:4	92:11 107:16
34:17 35:10	leaving 48:22	licensed 122:16	local 15:18 16:13	lot 13:7 15:2
36:12 42:18	69:10,12,13	licenses 123:3	136:14,15,25	18:22 19:1
46:20 47:21	70:4 90:22	life 44:9 48:21	137:1,3 138:8	31:23 32:21,21
54:12 59:17	106:22 144:14	48:25 108:7	144:9,12	35:3,4,24
128:8 148:6	led 96:15	150:13	locate 35:19	40:8,8 43:24
160:6	Leer 137:4	light 74:14	locating 34:23	45:13,13,14
lacked 30:19	leeway 76:4	liked 96:19,22	35:9	52:4,10,16
Laner 10:2	left 30:7,8,9	99:15	locations 26:7	53:20 54:23
language 54:21	69:7 70:22,24	likes 70:11	lodged 7:7	54:24 55:5
laptop 139:10	71:1 74:24,25	limine 41:5	logistically 90:7	56:3 60:6
139:20,24	90:24 144:3	limit 55:2 93:23	long 8:19 9:2	63:21,22 67:3
laptops 139:4,8	146:14	94:5	45:2 52:10	67:18 68:14
139:16	legal 5:11 9:18	limited 15:11	87:24 88:5,11	69:25 82:13
large 23:2	13:6 40:20	92:1 105:19,21	88:14 89:1,1	83:9 86:22
107:24 144:8	132:11 133:6,7	limits 94:3	108:16 126:16	92:18 103:1
larger 127:16	133:9,10	lines 97:4 98:19	140:20 160:2	104:24,24
late 37:2 147:15	legislature	129:8 150:6	long-term 70:13	106:8 112:2
latest 94:25	103:19 111:22	lingering 138:12	longer 54:8,9	117:5,16 118:4
law 9:11,12,16,18	lengthy 115:10	list 27:20 42:23	68:25 86:5	121:6 122:19
10:1,2 42:4	lenience 45:8	80:6,9 82:6	106:9 117:21	132:24 133:7
44:24 53:11	lenient 38:8	118:8 122:5	127:11 138:23	135:23 142:17
	99:2,23	listed 62:13	153:19 160:5	146:9 147:10,11

147:16 157:9 159:16 160:13 160:14 Lotus 72:11 louder 96:25 Louis 34:25 54:7 105:16 105:20 love 158:25 loves 71:7 low 40:8 63:17 156:6,11 159:21 low-level 83:21 lower 16:3 17:8 127:9 lower-level 45:23 83:20 lowest 127:9 lucky 122:3 luxury 40:21 81:12 84:6	management 15:2 65:15 125:5,9,17 135:17 145:11 145:14 146:3 147:15,22,25 154:4 157:25 158:2,13 manager 9:15 manner 22:11,16 31:15 74:22 Maries 8:17 26:3 marijuana 46:3 46:7 117:18 mark 53:9 78:7 85:17,17 97:22 110:4 155:1 marked 61:22 100:15 103:9 141:2 147:4 material 147:12 materials 7:23 Matt 5:15 6:14 49:7 matter 5:4 38:12 61:2 85:4 116:23 117:8 154:9 matters 148:15 Matthew 1:16 2:2 3:12 4:3 5:3 6:1,6 160:21 mean 16:18 33:1 33:18 42:8 44:22 48:25 51:8 64:12 66:5 67:17,21 68:5 69:15 77:1 78:16 81:10 84:25 87:6 93:11,14 93:17 100:4 106:10 107:20 108:21,24 110:20 117:5	118:11 120:9,11 122:10 124:13 124:24 125:19 127:5 129:2 130:5 138:13 139:17 142:20 147:12 148:22 149:4,19 153:7 153:23 154:19 157:13 means 59:11 60:3 68:11 76:13 108:22 110:21 112:10 meant 69:16 103:5 154:11 157:8 mechanisms 127:17 Media 49:12,15 109:19,22 medical 73:10 136:5,6 meet 8:6 13:13 21:13,17 22:23 26:13 27:15,18 28:2,4,11 42:9 47:4 60:8,13 65:10 67:6 71:21 73:3 75:11,18,24 76:15,25 88:3 89:24 90:12 98:10,11 104:11 112:13,15 113:2 113:8 121:15 139:5 meeting 23:1,19 23:20 24:5 26:22 29:2 48:6 73:25 77:21 87:23 88:4,14,15,21 88:24 98:6,12 98:15,22 147:21 148:1 meetings 79:20	113:5,6 member 143:8 155:11 members 124:6 memory 75:9 107:12 mental 21:25 33:13,15,18 131:3,5 mentally 117:12 mentioned 35:24 38:16 53:21 68:14 100:11,23 103:11 117:1 118:7 153:21 154:23 155:10 156:25 mentor 33:4 52:9 68:3 121:22 mentorship 52:16 Mermelstein 100:21 104:10 146:17 147:10 147:11 messed 74:18 met 7:18 25:22 77:17 78:12 84:14,15 86:22 88:8 111:2,24 metrics 62:8 63:2 157:5 Michael 89:7 90:4,10,14 92:20 140:8 158:5,15,20 Michael's 90:20 mile 38:22 miles 38:19 million 46:1 mind 12:2 19:12 53:10 76:3 103:14 160:2	minimal 53:15 53:16 58:19 minimum 39:23 46:4 73:23 75:18 minor 16:17 84:23,25 minute 18:5 38:22 97:23 minutes 24:7,14 45:17 49:6 123:13 mirrored 102:9 misdemeanor 46:3,7 108:10 111:15 112:7,9 112:15 117:20 157:3 misdemeanors 61:8 83:20 112:1 113:21 114:5 116:16 117:14,25 149:22,23 150:10 157:20 miserable 44:11 73:22 95:13 missed 73:5 123:19 missing 31:22 32:8,14 52:16 mission 122:24 Missouri 1:1,7 3:1,7,16,19,20 4:8,13 5:5,6 5:10,19 8:15,17 9:13,13 62:23 71:18 76:1 105:9,22 117:24 122:16 123:15 127:2 128:4 141:3 145:12 151:22 154:7 161:2 Missouri's 9:21 mistreat 44:12 misunderstood
M machine 133:5 Madrid 3:16 5:9 main 15:15 21:12 21:16 47:10 88:11 101:3 129:25 136:13 137:19 maintain 22:21 44:8 67:1 121:19 maintained 74:22 maintaining 13:15 major 55:9 146:23 making 11:9 32:24 70:4 122:21 155:9 159:22,25 man 36:21 manage 10:8 15:7 72:9 77:11				

17:17 mitigating 56:18 mitigation 34:9 37:6 55:18,20 56:1,21,23 57:2,7,14 117:10 mixed 131:18 145:7 MO 4:10,16,21 Monday 48:2,10 148:23,24 158:6 money 90:18 92:25 96:19 134:1,6 136:5 136:24 137:1,6 159:20 monitoring 12:5 134:13 month 20:23 38:12 48:23 90:21 108:18 month-and-a-... 108:19 months 27:10 38:5 42:21,22 65:1 108:12 122:6 130:23 153:14 Moser 118:19,22 motion 26:23 32:9 40:12,15 42:6 44:25 45:9,17 100:25 101:18 102:8,22,23 103:23 104:9 104:24 105:1,3 105:8 134:16 motions 13:8,9 31:12,23 32:20 40:6 40:23 41:2,5,7 41:10 42:19 44:19,22,23 46:17 101:22	102:2 105:6 148:2 151:25 motivated 70:17 70:20 move 43:13 moved 39:2 104:19 moves 134:10 moving 10:4 73:2 95:10 104:17 135:17 138:22 MSDP 5:20 mshahabian ... 4:5 MSPD 10:4,10 10:12 28:15 54:6 56:21 57:24 65:6 68:16 85:14 87:6,10 92:1 94:8 96:15 104:13,16 105:5,14 110:18 111:8 113:3 144:12 multiple 106:6 murder 60:15,18 77:7 81:24,25 90:24 92:19 92:24 93:12 93:13,23 94:11 94:11,23 95:3 108:14 132:6 142:3 157:19 murders 92:10 muted 98:16 <hr/> N <hr/> N 2:1 4:1 NACS 71:18 name 5:10,11 6:14 54:6 105:16 123:14 named 64:20 narrowed 140:24	nearly 33:16 necessarily 19:13 63:20 94:8 103:25 147:12 160:13 necessary 30:20 33:8 34:19 37:11 50:24 61:11 120:4 necessity 47:8 neck 117:19 160:10 need 7:10 15:21 22:2,4,9 23:17 27:13 54:21 56:5 65:24 67:6 71:10,22 71:24 72:6 80:15 82:22 91:16 95:14,14 100:7 116:20 123:17 128:22 129:15 137:8 138:10 146:10 146:25 158:21 needed 33:9 36:18 37:14,14 40:7,12 41:6 78:20 84:19 107:11,11 111:4 135:9,11 154:21 155:20 needle 94:17 needs 33:15 96:10 112:22 153:5 negative 18:19 21:5 negotiate 50:12 51:13 52:14 negotiation 50:5,5 52:1 negotiations 50:10 115:15 neither 103:24 161:8	network 139:12 never 37:12 41:22,23 42:20 52:1 53:9 56:24 58:9 71:3,5,13 75:14 97:3 103:3 122:11 135:8 137:1,4 nevertheless 64:14 146:19 new 4:5 12:13,15 12:16 13:13 14:14 32:23 41:8 48:23 63:19 64:24 65:2,4,6,9,12 65:16 66:8,10 66:15,19,23 66:24 67:11,12 67:22 68:8,14 69:18 72:8 77:7,10 81:6 97:11 100:5 107:15 108:4 122:5 124:11 127:10 129:21 131:14 139:14 153:10 155:4 156:11,11 newer 11:12 40:17,17 128:15 129:6 135:23 newly 41:10 NGRI 33:24 34:2,8 Nifong 4:15 night 69:15,16 160:2,3 nine 13:21 14:11 nod 6:24 nodding 152:24 non-attorney 12:22 non-attorneys 13:1	nonexistent 131:6 nonprofit 124:8 124:9,9 norm 51:10 108:10 normal 25:10 44:9 normally 21:16 78:18 137:11 Notes 72:11 notice 71:6 122:20 152:3 noticed 130:3 notified 87:20 114:23 137:4 notify 78:22 number 32:22 55:2 61:17 64:21 77:4 79:12 83:19 91:23 102:9 125:15 128:3 130:11,24 135:5 136:19 142:10 149:21 150:2 153:10 156:13 157:1,11 numbers 17:14 61:18 63:16 69:21 110:16 112:3 128:5 141:7,8 142:14 142:19 143:21 150:11 nuts 65:11 NY 4:5 <hr/> O <hr/> o'clock 3:14,14 oath 97:10,12 object 100:24 objection 7:7 80:23 86:25 118:9 objections 7:4 137:22
--	---	--	---	--

<p>obtain 23:17 31:15,19,21 37:15 50:3 55:13 obtaining 31:18 obviously 19:19 23:4 29:2 114:9 115:17 133:18 142:16 148:24 158:18 159:20 occasionally 44:9 occur 18:11,16 38:24 88:14 occurs 22:17,18 OCDC 73:6 October 79:17 109:7 offenses 8:13 offensive 64:16 offer 49:21,22 50:4,4,7,10 53:1 98:24 112:14,16,19,21 113:23 114:2,6 114:14 115:1 117:6,8,9 offered 113:11,14 114:25 offering 93:11 115:20 office 4:9 8:11 8:16 9:21 10:8 12:20 13:15,18 13:20 14:7,13 14:15 15:3,8,13 15:14,15,23 16:1,15,24 17:23 18:12 20:18 21:10 22:23 23:3,3 27:7 29:17 36:8 38:21 39:14 40:22 46:16 48:18 48:22 51:12</p>	<p>52:17 53:17 53:20 54:5 57:1,16 58:13 58:16,21 59:14 60:22 61:4,18 63:5,6 64:2 66:3,12,16 67:1 68:4,8,12 68:17 69:7,8 69:11 70:22 70:24 73:1,18 74:25 76:25 77:9,14,17,22 78:12 86:6 87:7,11,14 89:8 89:9,12 90:19 91:11 95:15 97:18 101:3 102:25 105:7 106:4,16,18 107:1 108:6,17 109:5 110:10 111:5 114:14 116:8 118:21 119:20 120:13 120:21 121:14 121:16,17 124:17 127:6,8 128:7 129:23 131:17 132:14 132:17 133:2,4 133:22 136:21 137:14 138:14 138:15 139:7 139:23 140:2 140:5 144:3,12 145:1,3,5,21 146:14,16 148:5 152:4 159:17,19 office's 59:18 121:3 office-wide 103:11 offices 69:4 101:3 121:13 133:1 145:5</p>	<p>Oh 49:8 okay 6:18 9:11 17:21 44:1 67:6 75:14 76:24 86:11 87:21 90:14 97:24 115:22 116:4 116:22 119:25 141:5 149:22 150:9 153:9 Oklahoma 109:3 once 8:8 50:7 78:20 116:3 134:16 140:23 155:16,19 ones 78:4 80:2 90:23 100:10 102:15 122:8 157:23 ongoing 11:4 72:9 open 17:19 19:3 23:24 25:18 47:17 67:2 71:3 80:17 131:24 133:18 153:14 opened 97:16 opening 63:15 108:19 122:7,7 openings 122:5 operations 65:12 opinion 22:10 27:6 29:1,16 30:18 31:14 32:11 40:11 42:7 46:11,15 46:21 51:11 52:11 53:5 55:19 57:5 60:21 61:2 64:1 71:9 75:4 75:8 93:2 101:11 150:12 159:6</p>	<p>opportunity 19:17 36:4 opposed 127:19 optimistic 153:24 oral 73:14 order 15:17 21:20 50:13 84:22 87:10 98:18 102:6 103:12 120:2 121:11 ordered 80:23 81:3,15,19 82:1 82:13 87:3 91:4 112:2 115:3 ordering 13:16 80:12 orders 14:22 81:5 organizations 124:8 orientation 65:13 original 30:10 81:14 originally 80:13 ORRICK 4:4 outcome 51:24 56:8 93:22 161:12 outcomes 56:16 outliers 156:4 outlined 88:25 outrageous 159:24 outside 26:18 26:21 34:5 37:10 54:5 55:13 68:12 overcome 160:12 overcrowded 44:12 overlap 140:22</p>	<p>overloaded 82:11 oversell 52:4 overwork 64:2 overworked 33:5 38:7 76:5 150:6 152:4 owned 134:15 134:17</p> <hr/> <p>P</p> <p>P 4:1,1 p.m 5:2 49:12 49:15 109:19 109:22 160:21 160:23 PA 111:16 112:8 page 6:20 62:3 62:5 86:9 89:19 110:13 111:10 158:3 paggers 128:15 pages 85:22 89:4 128:21 paid 9:23 64:12 70:5,14 94:1 pair 66:10 130:1 130:1 panel 92:3,3 143:21 156:1 paragraph 44:24 Pardon 126:1 143:18 part 33:3 38:6 39:18 53:22 55:6,25 56:3 89:21 107:24 111:13 116:17 124:15 141:16 144:1 155:18 participant 143:13 particular 14:17 20:3 32:12 33:8 51:18</p>
--	---	--	---	---

55:3 70:21 73:4 85:5 94:13 95:21 103:2 120:14 150:19 157:12 157:13,14 particulars 150:19 parties 73:16 116:23 161:9,11 pass 67:20 138:23 passed 108:25 passing 83:4 passionate 70:1 pay 92:23 94:6 160:5 paycheck 123:5 123:7,7 paying 134:13 payment 93:9 Pearson 98:3,7 98:11,12,17 99:21 102:5 103:12 121:10 penalty 93:25 94:15 pending 3:17 7:12,14 44:5 60:3 152:14 pennies 94:1 pens 15:17 people 8:3 11:9 17:15 44:12,13 65:18 66:6 69:1,20,22,24 70:1,10,16 74:21 79:5,5,7 79:19 80:5,8 82:5,8,14,16 82:18 83:1,6 83:15,19 84:2 84:5,9 93:12 95:20 96:5 98:4 99:2,22 109:4 115:24 116:17 117:16	118:1,2 119:10 119:16,23 120:1 121:4,7 122:4,11,17,22 123:4 125:7,13 128:19 134:7 135:5,12 144:13 150:14 159:8,9,15,22 159:25 160:12 160:13 percent 11:3,6 11:16 12:12,15 12:17 28:20 28:24 29:14 43:2 54:19 55:3 62:18,24 63:13,25 82:9 135:1 146:3,6 percentage 12:9 28:21 39:5 62:16,17 62:20 63:3 66:18 135:5 142:15 period 62:9 64:23 125:16 130:23 153:14 permission 87:19 permit 117:21 permutations 151:2 person 54:8 59:7 66:13 78:23 85:5 93:18 96:11 106:21 109:2 114:1 115:2 119:25 122:20 135:12 144:9 personal 16:7 71:19 83:24 138:13,15 personally 73:15 130:7,12 137:16 143:2,5	pertinent 79:2 Peter 140:18 Petree 3:17 4:20 5:10 6:2 161:4 Petsch 100:15 146:16 147:3,6 Phelps 8:17 25:3,12 26:14 38:21 39:23 phone 13:15 25:14,15 145:25 phrase 129:5 physical 21:25 pick 18:4 25:14 25:15 80:7 picked 6:25 Picker 110:9 111:11 112:6 picture 39:18 pictures 139:21 pile 82:24 96:5 place 21:9 24:11 70:18 88:4,5 96:16 127:18 133:14 placed 113:24 places 52:17 Plaintiff 61:22 Plaintiff's 53:9 97:22 110:4 141:2 147:4 155:1 157:24 plaintiffs 1:5,17 3:5,20 4:2 5:16,17,25 6:8 6:15 planning 88:3 plateau 128:5 player 36:22 plea 24:9,10 49:21,24 50:9 50:14,25 51:18 51:21 52:4,8 52:20 55:23 107:8 114:14	126:4 plead 31:17 43:23 75:12 83:22 112:19 112:20 117:14 150:24 pleaded 83:7 pleading 44:16 pleads 115:21 pleas 49:19 50:12 51:14 52:14 54:1 please 5:13,23 17:11 80:8 95:20 pled 18:23 44:16 83:15 84:6,10 117:16 117:19 point 17:7,22 20:17,22 24:19 32:8 35:23 40:19 51:13 60:2 61:8 86:24 99:24 100:4 103:1,25 106:18 110:6 113:1 114:9 138:23 140:25 147:14 148:2 pointed 64:19 poke 43:10 policies 16:13,18 138:7 policy 89:2 117:13 136:20 138:11 political 123:24 pools 68:17 populated 25:3 portion 11:15 portions 138:2 position 9:14 54:9 89:10 108:16 122:12 122:14 145:19	145:19 160:8 positions 13:14 109:10 possess 117:22 possibility 57:11 112:24 113:15 113:17,24 118:6 possible 10:10 22:5,21,24 27:18 61:12,17 61:19 77:4 90:7 93:21 150:25 possibly 31:6 postage 137:5,8 posted 134:4,12 135:4 potential 13:12 78:18 93:18 102:16 145:11 148:16,23 potentially 29:6 50:8 51:8 113:2,12 141:7 power 123:18 147:14 practice 26:23 55:17 96:20 109:12 122:25 123:4 137:14 143:3 156:22 practicing 109:7 practitioner 9:25 practitioners 92:19 Prasad 4:3 5:17 5:17 precedent 154:8 predetermined 45:19,21 predominantly 149:24 predominate 72:11 predominately
--	---	--	--	---

149:23	prevented	41:7,16,16	41:13 54:23	pros 160:14
preface 54:18	135:16	42:2,2	106:4,10	prosecuting
prefer 96:21	prevents 52:10	probably 11:4,5	124:19	86:3 119:8
prejudice 101:12	previous 127:1	11:11 12:7,12,14	procedure	prosecutor
preliminary	previously	18:6,8 19:2	67:14,16,17	42:4 43:12
21:11 41:15	61:22 75:3	23:19 24:8	procedures	45:5 48:4
107:13	100:15 103:9	27:11 28:6,19	133:14	50:3,6 52:1,2
prep 48:18	primarily 13:15	30:12 45:25	proceed 6:9	69:13 71:7
preparation	14:16 27:5	53:16 56:5	35:18 94:19	83:21 86:17
7:24 8:2,7	33:20	60:19 63:24	115:24 116:2	94:12,14,25
37:2 148:19	prior 9:7,11 11:4	64:9 71:17	proceeding	95:2 98:13
prepare 7:16	14:3 18:11 21:9	72:6 76:25	24:1 58:18	112:13,15 114:2
21:11 36:3	21:14 25:21	79:16 82:9,10	proceedings	114:6,24 115:18
42:19 43:15	27:20 30:21	82:15 83:20	58:14 103:20	115:19 116:6
44:18 46:16	33:1 72:17	83:21,22,23	process 17:23	117:11 119:15,16
46:23 47:3,22	75:5 81:9	87:20 92:1,5	18:10 19:22	139:15 160:10
47:25 48:14	85:11 89:4,18	93:12,20,24	23:14 33:21	prosecutor's
51:12 120:5	109:4 112:11	97:15 100:5,21	35:20 47:13	69:4,5 139:13
prepared 47:12	144:15 145:17	104:15,16	50:5,5,9 67:5	159:17
147:10,11,13,14	priorities 132:1	106:19 108:9	67:14 80:2	prosecutors
147:24	prioritize 80:5	108:12 112:3	98:5 143:25	32:22 53:2
preparing 8:4	81:4	117:4 119:19,25	144:6,23	69:8,11 70:10
13:9 47:16,17	prioritizing 23:5	120:1 127:9,25	146:18 154:2	79:4 86:25
prepped 47:10	priority 80:6	128:19,25	154:19 155:13	88:22,24 113:1
prepping 48:10	81:6	130:12 132:16	produced 3:13	113:8 117:5
present 5:13	prison 38:23,24	132:18 136:19	6:7 86:7	118:1 144:19,22
20:9 21:3 37:7	39:6,8,12 49:1	149:16 154:15	professional	160:11
42:16	114:12 126:13	156:1	78:5	protecting
preserved	126:22	probation 23:13	program 65:7	138:21
137:23	privacy 25:8	58:8,9,10 73:9	programs 56:14	provide 18:2
presiding 98:3	private 54:10	83:22 85:4	105:12,19,25	25:8 50:24
152:6	56:25 84:23	112:1,10 113:24	106:2	56:20 90:18
press 124:8	85:1,3,6 92:16	113:25 114:4,9	progress 154:3	97:8,19 98:20
prestige 160:12	93:15 94:5	114:10,25	progresses	98:21 102:24
prestigious	99:1,6,11,18	115:15,20,22	23:16	104:10,18 107:1
160:7	102:12 122:25	116:15 118:4,5	progressively	119:23 124:16
presume 124:5	123:4 124:7	157:20	68:17	151:11 154:15
124:6	142:22,22	probations	prohibition	155:4
pretrial 28:22	143:1 155:23	113:22,22	80:13 100:20	provided 37:15
28:25 29:18	156:17	problem 25:8	Project 62:23	98:18 121:20
41:2	privilege 29:24	25:12 26:14,15	71:18	146:11 147:14
pretty 21:23	36:11 47:19	74:14 77:9	promise 83:22	151:7
33:13 39:24	52:19	88:17,20	prompt 76:13	provides 123:1
50:8 87:22	pro 105:12,23	95:17 98:8,9	proper 29:7	providing 36:15
130:22 131:5	105:24 113:8	98:22 119:18	137:22	74:1,2 97:17
135:3 140:25	proactive 76:9	121:7	property 134:15	121:3
160:17	probable 32:6	problems 22:1	134:17	PTSD 36:18,23

public 4:12,13 8:11,15 9:7,21 21:4,5 70:11,18 76:4,12 80:12 83:11 93:8 96:18,20,23 112:12 114:22 118:11,12 123:25 128:18 129:23 130:9 131:11 141:3 142:17,21 143:1 145:12 155:23 159:9,10,18 160:7,9,11,15 Pulaski 8:17 25:13 26:19 86:17 88:12 119:8 pull 82:16 punishment 48:21 purpose 103:6 127:12 purposely 19:25 purposes 34:9 purse 135:13 147:1 pursue 42:12 push 16:22 81:13 138:19 138:20 pushed 51:23 120:11 put 11:7,17,22 14:9 25:25 43:17 45:8 52:7 71:6 73:8 75:6 96:12 103:10 121:10 129:3 133:22 143:9 155:9 puts 148:1 putting 104:24 PV 111:15 112:7 112:10	Q qualifications 111:2 qualified 108:20,21,22 113:2 159:4,7 qualifies 78:23 qualify 78:24 79:6 83:12 110:24,24 112:23 114:23 135:6 qualifying 28:15 28:18 quality 68:24 121:8,21 122:3 125:1,3,15,18 128:9 question 7:1,6,8 7:12,13 31:19 32:1 33:10,11 35:6,7 53:24 71:12 79:24 96:11 132:15 138:7 143:11 144:8 145:9 149:10 questions 6:10 6:23 7:5,8 31:25 53:22 56:2 67:3,18 67:19,23 123:9,10,16 133:25 134:2 152:17,20 153:19,20,21 156:24 160:19 quick 28:5 quickly 26:17 150:25 160:17 quiet 19:6 quite 10:17 18:9 45:15 116:18 122:9 159:13 quitting 95:22 95:24	R R 4:1,3 Ramsey 4:8 5:18,18 123:10 123:14 152:17 ran 136:15 137:3 137:5 random 110:2 range 48:20 ranged 81:21 rank 62:13 ranked 62:15 rape 36:19,20 48:20 60:15 108:14 rare 54:1,11 76:25 133:20 134:9 rarely 31:13 51:1 51:2 rate 92:24 106:3,5 re-file 101:13 reach 33:16 reached 146:21 reaching 29:8 151:16 reacted 99:11 reaction 82:18 reading 50:2 ready 37:21,23 38:7 45:15 71:3,5 reaffirm 97:12 real 25:25 56:13 118:6 realistically 15:20 71:20 91:22 realities 70:3 reality 146:24 149:21 realize 160:18 realized 30:23 74:4,9 116:4 really 10:13 15:7	15:9 20:20 23:25 25:19 27:13 28:8 29:10 32:24 33:4,4,5 45:15 48:14 50:6 66:4,22 67:19 69:23 70:1 74:19 76:10 77:1,7 79:16 81:12 82:22 84:6 88:10,18 92:20 95:20 96:10,21,22 100:2,6 102:25 103:19 103:21 116:14 117:6,8 121:15 122:3,9 123:5 128:21 129:19 133:9 136:11 138:21 142:20 146:12,13,23 149:4 151:3 154:9,14,16 158:18 reason 17:12 34:1 38:6 48:18 49:3 74:25 108:2 111:3 131:3 135:20 136:21 137:19 138:16 148:5 reasonable 92:7 148:11 reasonably 73:11 reasons 34:8,12 38:1 69:10 70:19,24 91:23 107:9 137:19 reassigning 89:11 recall 7:21 54:16 96:25 158:12	receive 10:9 18:6 32:4 57:18,19 78:17 78:21 92:11 98:5 101:2 110:22 140:14 received 52:20 78:23 82:18 98:2,2,16 110:6 receives 154:17 receiving 18:4 reception 98:16 recess 49:13 109:20 recession 68:23 124:22 124:23 recognize 61:23,25 62:1 62:1,2,5 78:8 85:18 95:5 100:15 104:6 110:5 155:1 recognized 98:7 recollection 110:7 record 5:1 49:6 49:12,14 59:9 109:17,18,21 126:11 134:16 137:23 160:22 recorded 5:3 25:16 records 136:5,7 Redirect 2:4 reduce 116:12 154:12 reduced 161:7 reducing 42:23 reduction 128:14 reductions 46:13,17 reevaluate 84:7 refer 89:6 93:10
---	--	---	---	---

156:16 reference 87:23 89:7 107:17 referenced 78:14 references 44:24 referred 99:18 referring 42:23 64:20 97:1,7 111:17 112:6 154:25 155:6 refers 112:9 reflect 155:20 156:13 reflected 24:3 63:24 64:3 reflects 62:20 62:21 63:5,6 64:14 157:11 refuse 15:16 16:19 78:3 103:3,4 refused 92:22 115:1 refuses 50:9 108:3 regard 76:15 regarding 36:18 78:12 86:15 95:9 110:11 regardless 117:7 regards 86:2 regular 60:13 72:13 79:20 145:24 regularly 60:9 rehabilitation 56:17 reject 134:20 134:22,23 135:3 relatable 125:23 related 31:11 38:17 148:13	158:15 161:8 relationship 139:14 145:13 158:2 relative 161:10 relatively 39:7 125:17 relaxed 100:3 released 18:8 126:9,17 relevant 23:17 relief 102:24 152:7,12 154:3 154:4 relieving 32:19 religiously 38:2 reluctance 57:20 reluctant 83:9 83:13 rely 133:16 remain 19:4,12 94:20 remained 48:17 remaining 66:13 remains 94:18 remedies 101:21 102:9,10,16 remedy 101:17 remember 9:22 22:8 49:10 54:5 55:4 66:21 73:4 75:8 79:17 88:22 90:25 92:14 97:5 102:13,14 105:15 111:21 124:4 125:6 128:22 140:17 140:20,20 155:22 156:9 157:17 remembering 86:21 remind 66:17	remotely 139:6 removed 59:12 145:18,19 renegotiations 24:20 rent 124:16 reopen 153:5,7 rephrase 7:8 replace 89:13 report 12:4 reporter 4:19 5:22 6:20,22 7:2 53:9 78:7 85:17 97:22 110:4 154:25 161:1,16 reporter's 5:10 reports 148:14 represent 8:12 10:9,11,14,21 17:23 21:8 23:7 39:15 59:18 60:12 60:22 61:3 71:11,25 75:10 78:1 91:17 95:19 96:1,2 103:5,5 111:8 123:15 126:9 126:23 154:1 representation 10:10 23:10 29:25 36:12 47:21 50:19 50:22 74:2,3 74:6 76:18 91:16 92:11 93:21 97:8,17 97:19 98:20 104:18 105:25 107:1,5 113:3 118:3 119:23 120:2 121:4,5 121:20 128:16 148:20 150:15 154:1,15,17 represented	74:17 79:15 115:2,25 130:4 representing 74:8 103:4 149:13 153:12 request 26:14 26:23 31:8,20 31:22 32:9 37:12,17 57:3 57:4 78:19 91:19 135:25 136:3,9,20,23 137:7 141:4 158:1 requested 80:5 98:6 136:16 requesting 72:4 require 29:19 60:6 required 97:9 116:11 133:17 requirement 65:20 requirements 67:7 73:3 150:18 requires 22:12 24:14 31:16 39:19 42:6 77:13 123:6 research 40:14 40:15,18,20 40:23 reserved 6:4 reset 48:13 resolved 111:15 112:8 146:10 resource 57:5 158:18 resources 10:16 15:7,8,10 22:11 27:7,21 31:15 37:15 42:18 46:12,20,22 50:11 51:12 52:12,15 53:6 54:13 55:13	55:20,22 56:2,20 57:6 59:17 60:13,17 95:14,16,17 121:11 145:24 146:10,12,13 146:25,25 148:6 158:19 respect 70:8,9 70:13 77:2 160:6 responded 84:12 146:22 responding 151:15 156:24 response 95:13 98:2 146:22 149:9 153:21 158:13 responses 6:23 158:2 responsibilities 10:5,6,7 11:18 12:25 16:11 responsibility 74:20 responsible 13:10,11 15:12 100:11,12 rest 85:24 110:18 112:3 141:9 147:24 restaurant 9:15 restaurants 160:1 restroom 7:10 result 19:22 49:24 90:1,13 102:1 results 32:25 109:8 145:7 retain 37:10 126:19 retaining 35:9 36:6 retains 126:13 review 7:20,23
---	---	--	---	--

31:15 75:12 79:22 97:23 101:19 126:8,11 reviewing 7:22 14:24 rich 159:10 Rick 146:16 ridiculous 38:2 76:15 right 15:23 16:3 16:24 17:9,19 19:11,11,14,14 19:20 21:6 23:11 46:6 49:8 56:2 64:20 72:4 82:22 83:25 87:8,12,15 92:13 94:14,18 94:23 97:4 102:6 105:10 107:20,20 108:19 113:4 131:18 135:14 149:11,15 150:2 156:6 159:5 right-hand 62:14 rightfully 114:18 rights 19:8 53:25 116:19 117:15 138:22 ring 96:25 rioting 119:9 risk 52:7 59:7,9 road 19:20 23:4 38:15 39:23 90:11 robbery 82:4 role 155:12 Rolla 64:20 90:5,8 141:9 141:10 146:14 room 25:4,4,6 25:13,23 26:11 26:15,20	rooms 25:3 rough 132:17 roughly 11:1 14:10 15:23 17:15,20 39:5 63:4 66:17 80:18 81:20 82:8 99:17 157:18 round 143:23 route 44:15 103:7 routinely 20:3 115:8,9 RSMo 126:14 RubinBrown 62:23 63:1,2 63:16 71:18 140:23 141:13 141:24 142:9 143:9 155:14 157:5,16 rule 7:11 81:16 91:14 109:5 116:13 149:4 rules 6:19 10:14 74:20 75:21 76:1,1,11 78:5 81:14 126:21 running 136:25 rural 34:23 55:6,6 56:11 96:21 105:22 117:24 rush 51:7 rushed 51:9 rushing 51:3,5 Ruth 103:23 S S 2:6 4:1 sacrifice 45:14 sacrificing 31:5 31:7 safety 25:20,24 sake 138:19 sanction 73:2	sanctioned 73:1 73:8 sandwich 41:18 satisfied 146:3 Saturday 48:9 saw 14:11 42:20 125:8 saying 19:3 22:22,22 36:23 42:2 45:12 81:12 82:22 87:1 91:9 100:7 102:6,20 111:2 119:8 149:1,21 150:23 152:4 154:14 says 6:8 45:5 62:18 64:21 76:1 85:6 88:3 89:23 103:3 111:13 112:7 115:22 158:4,6 158:7 scary 52:3 74:15 scenario 114:8 scene 29:4 schedule 55:8 93:9 152:24 153:2 scheduled 102:18 school 9:12,14 9:16,19 67:15 70:15 96:18 108:25 123:21 148:17 Schwartz 118:19,21 science 123:24 scope 79:24 103:12 scrambling 35:23 scratch 147:8 screen 125:13	125:14 screening 125:13 screw 52:6 Scutti 4:24 5:11 se 113:9 second 24:20 44:17 48:17 61:23 86:9 103:10 110:13 137:11,16,17,25 138:5 Section 126:14 secure 26:6 see 21:5 28:7 39:25 40:9 43:24 62:11 76:23 87:23 88:20 89:14 110:6,14,19 111:11 117:17 119:12 120:2 128:6 144:2 144:20 146:15 153:8 154:8 158:4,7 seeing 33:1 123:2 130:4 seek 115:9 seeking 116:6 seen 32:18,20 32:20 55:25 68:25 69:17 82:23 83:25 100:17 114:11 125:20 128:17 sees 40:17 85:6 selected 155:24 send 79:3 91:3 91:7 95:11 102:20 133:10 135:24 136:12 137:11 156:10 sending 86:19 95:18 158:9 senior 40:16 59:23 66:10,11	106:22 130:2 sense 10:15 18:5 74:15 91:13,15 130:21 132:22 134:20 sent 77:23 78:11 79:18 80:15 84:15 85:21 86:1,3,13 87:20 91:4 95:8 126:13 146:9 157:25 sentence 93:19 112:17 116:3 sentenced 126:18 sentences 113:11,18,18 115:10,14 sentencing 47:14 55:16,18 55:20 56:8 57:2,7,14 126:4 separate 29:16 80:17 separately 81:1 September 79:16 147:15 serious 18:25 82:4 106:19 108:9 116:13 117:13 131:14 132:7 149:24 seriously 95:21 95:24 serve 72:5 served 114:3 services 3:16 4:20,24 5:9 5:12 37:10 110:24 133:15 SES 113:22 session 140:10 sessions 65:23 set 15:14,15 16:14 20:10
--	---	--	--	--

46:2 73:3 97:21 100:5 148:23,24 setting 15:12 22:20 24:23 26:13 63:2 settings 25:1 seven 38:22 67:6 76:16,22 severe 60:14 severity 59:6 sex 157:19,21,23 sexual 65:14,18 Shahabian 4:3 5:15,15 6:10,14 49:5,16 109:16 109:23 123:8 153:18,20 160:19 shake 6:24 sheet 21:22 53:22 78:25 128:11,20,24 sheetrock 25:7 sheets 11:10 12:4 128:24 148:14 shelter 56:12 sheriff 119:14 shift 106:21,23 Shipma 4:13 5:20,20 7:18 8:1,7 49:7,9 144:11 152:18 152:20 153:17 shipped 60:4 shive 25:23 shock 126:15 Shondel 1:4 3:4 3:19 5:4 short 95:15 103:17 146:8 shorthand 6:2 shoveling 38:14 show 17:12,14 48:12 97:21 100:14 103:8	110:3 129:12 154:12 showing 139:21 153:13 shows 152:23 shrink 82:25 side 62:14 134:3 139:3 signature 6:3 signed 97:10 significant 39:19 silent 19:4,12 similar 13:7 26:18 100:25 101:2 105:6 135:20 simple 26:23 50:15 149:20 simply 89:25 single 22:9 91:3 108:5 SIS 113:22 sit 55:10 66:8 96:5 100:4 143:24 sitting 18:1 20:23 30:25 39:22 69:17 76:22 98:4 125:22 142:19 154:18 160:4 situation 18:20 18:21,23 44:14 116:24 119:14 149:10 situations 34:9 117:7 six 8:16 13:22 15:9 39:19 94:4,4 102:14 102:14 108:11 Six-and-a-half 12:24 six-month 116:3 skills 65:7 sleep 160:3	slightly 17:3 84:8 slots 109:11 slowly 154:5 small 39:7 smiling 116:1 so-to-speak 11:15 147:2 sobriety 34:16 social 55:15 society 159:12 sociology 141:20 sole 135:9,19 solo 9:25 92:18 solutions 98:21 98:23,24 somebody 15:18 25:23 27:14,16 33:4 48:25 52:9 54:3,20 60:9 65:3 89:13 106:17 108:17 122:15 somewhat 10:15 Sonic 9:12 soon 22:5 37:5 65:3 sorry 31:25 33:25 44:18 88:12 149:19 sort 12:5 13:8,16 14:24 20:5 21:19 22:6 25:8,21 26:12 29:9 33:15 55:10 56:18 65:16,19 67:2 75:25 114:8 137:23 138:16 138:16 147:17 156:11 sought 94:15 151:17 Sound 7:14 soundproof	25:9 sounds 7:15 121:15 Southern 151:18 151:20,21 Spanish 54:20 55:5 speak 10:20 30:3 42:13 52:17 121:16 125:3 158:9 speaking 21:12 54:20 55:5 58:22 59:3 92:17 113:20 128:2 132:7 134:4 135:3,13 136:4 138:2 143:12 145:2 148:20 special 157:21 157:23 specialist 53:10 54:7 55:18 56:1,18,21 specialists 56:24 57:2,14 specialize 58:14 specialized 58:17 specific 67:24 83:8 specifically 10:17 81:3,5 82:13 112:2 specifics 29:23 36:10 47:20 52:18 122:18 spectrum 46:5 speculation 91:23 speed 11:13 106:7,12 speedy 107:21 spend 11:14 12:7 15:18 22:25	23:1,2,3 24:4 24:7,8 28:1 32:12 35:3 38:17 40:20 47:17 48:10 63:21 65:16 68:6,7 91:17 93:22 143:7 149:2 156:14 157:12 spending 24:6 63:22,23 68:12 155:21 spent 11:1,12 12:10,15 15:10 31:7 35:9 39:13 47:15 48:5,5,6,7,9 48:10 49:9 66:18,23 104:24 120:4 156:3 spirit 115:8 split 11:20 spoke 124:17 spoken 99:13 124:4,7,10,11,11 sporadic 139:12 spot 14:9 75:6 158:22,24,25 159:4 spotting 67:13 spread 121:11 spreadsheet 110:16 spring 65:21 140:18 Springfield 3:16 5:9 ss 161:2 St 34:25 54:7 105:16,20 stack 82:20 staff 10:9 12:6 32:2 33:6 62:22,24 132:11,12 133:3
--	---	--	--	--

staffed 63:11	53:24 56:19	strings 135:13	66:18 127:3	survey 156:10
stage 19:19	stating 77:24	147:1	149:15 151:13	suspect 26:16
stages 18:10	station 26:18	strong 45:7	supervision	53:15 54:25
stake 59:2	26:20	128:13 151:1	85:13 109:7	91:23 128:4
stale 22:6	statistics 141:20	student 9:11	supervisor	suspended
stamp 89:19	143:25	148:22	74:20 77:5,11	97:14 112:16
110:14 111:11	status 18:13	study 141:24	supervisory	SUTCLIFFE 4:4
160:17	83:5	143:10,13	10:23 11:15,17	swear 5:23
Stamped 86:10	statute 101:16	155:14 157:5	11:21,22 12:5	switches 94:21
89:5	102:9 103:1,17	stuff 140:23	12:11 16:11	swore 97:9
stand 58:10	statutory 36:19	subconsciously	supplemental	sworn 3:13 6:7
96:10 122:23	stay 153:10	55:1	32:9	system 59:12
standard 73:24	stayed 79:13	subpoena 13:5	supplies 13:16	60:11 62:8
73:25 74:9	131:7	subpoenaed	support 10:8	65:6,15 66:1
75:4,5 91:5	steady 79:13	42:14	71:24 146:3	67:8 71:13
standards 38:2	123:2,7 128:3	subpoenas	supportive	80:12 92:18
71:19	step 49:23	72:5	145:22 158:16	94:8 121:11
standpoint	67:18	substantially	suppose 56:4	124:1 126:1
64:13	steps 21:9 53:17	127:3,15	supposed 48:11	129:25 131:18
start 6:18 35:23	Sterling 140:18	sufficient 27:7	101:18	141:3 144:8
48:11 67:23	Steven 4:8 5:18	30:19 40:11	suppression	145:12 152:23
67:24,25 86:9	123:14	46:22	40:6,10,12,13	153:14 155:17
96:7,13	Steven.Rams ...	suggest 80:7	40:23 67:25	
started 6:15	4:11	127:1	117:10	T
27:10 71:15	steward 134:6	suggested	Supreme 73:8	T 2:6
74:22 79:14	stick 68:24	102:7 104:9	76:1 80:14	table 116:22
118:13 124:22	159:19	suggestions	81:18 97:3	take 7:9,12,14
125:7 145:23	sticking 109:23	100:19	101:7,9,10	20:20,21 21:10
151:14	STIPULATED	suit 96:10	127:2 151:22	24:11 28:6
starts 19:17	5:24	Suite 4:15	152:2 154:7,7	38:3,25 43:1
stat 48:20	stone 93:20	summarily	sure 11:9 16:17	49:6,23 50:4
state 1:7 3:7,20	149:4	104:25	30:5 31:1 46:6	52:7 53:17
4:8,13 5:4,18	stop 20:8 40:18	summarized	47:6,15 48:8	56:11 58:3
7:4 8:15,16	127:19 140:8	147:16	50:2 54:19	61:22 64:5,6
24:2 30:7 31:9	stopped 115:7	summons 18:8	55:4 77:12	64:10,11 72:18
39:3 47:10	140:7	Sunday 48:10	83:8 84:5	79:21,23 80:8
56:19 60:4	story 22:1	48:15	87:22 92:10	89:13 91:16
64:15,16 112:4	straight 123:20	supervise	100:17 101:2	92:22,23 93:7
122:16 123:15	straw 71:4	66:24 68:3	110:25 115:13	93:13,24,25
141:3 145:12	74:24	72:8 74:21	124:9 129:15	94:1 97:6,7,23
153:22 156:25	street 3:16 4:4,9	77:8 130:7	129:16 137:21	105:13,17,23
161:2	5:9	139:4 145:17	140:11 142:9	106:8 108:11
State's 43:10	strengths 45:6	145:20	147:23 151:6	108:16,18
45:6 47:7	stress 32:19	supervised	155:10 158:11	109:4 112:17
155:7 158:1	Strickland	135:16 151:10	surprised 84:2	114:4 115:21
statement 32:6	73:24 74:6	supervising	surveillance	119:21 123:17
states 1:1 3:1,18	75:4,5,7,19	8:12 12:13	29:9	139:8,16

142:16 143:4 150:15 151:5 153:11 157:9,10 taken 1:17 6:2 16:4 49:13 109:20 130:25 142:7 161:6,9 takes 35:4,24 45:12 54:24 60:18 63:9,18 93:4 106:8 108:11 112:19 talk 8:1,4 16:21 25:10 26:1,7 67:21 77:14,18 84:16 129:14 150:4 talked 47:5 61:14 86:23 100:10 106:3 107:9 119:18 121:9 124:18 talking 7:3 24:9 24:10 25:9,17 27:5 94:14 114:10,12 136:11 142:2 149:1 task 11:8 141:23 tasked 132:4 tasks 10:23,23 11:2,7 12:3,11 13:9 64:6 127:4 140:6 148:6,7,10 160:1 tax 142:15 taxpayer 134:6 teach 67:15,16 129:9 teaches 65:7,9 technically 103:18 tell 7:8 25:16 55:17 61:18 100:8 103:21 104:4 114:6	119:17 150:20 158:24 telling 58:2 95:21 116:1,1 134:14 tells 25:15 69:25 template 147:7 147:17 temporary 109:3 ten 19:19 24:14 40:2 48:21 63:12 65:2 92:9 114:2,3 150:10,23 ten-day 20:11 tenure 130:6,8 term 28:15 terms 36:16 39:14 54:23 73:21 81:8 109:9 125:17 131:10 146:4 terrible 122:9,10 test 34:16 testified 80:20 124:21 128:11 129:5 141:6 testify 45:10 47:15 testimony 78:15 124:6,7 127:1 127:14 134:21 135:7 144:25 148:4 161:5 Texas 8:17 25:13 40:1 83:18 84:1 90:10 99:21 115:7,19 116:5 Thank 109:23 123:8 Thanks 6:13 49:16 theirs 68:7 88:20	theoretically 92:25 149:2 theory 36:19 37:7,8 thereto 161:11 thing 12:5 13:16 14:24 20:5 21:12,16 22:6 22:9 25:19 26:18 28:5 29:10 41:8 43:16,20,24 44:22 47:4 52:3 55:11 56:18 63:15 65:16,19 75:25 82:24 92:14 137:23 147:17 150:9 156:11 things 12:6 13:8 13:12 15:21 19:1 22:7 23:18,20 24:5 26:24 29:6,11 32:24 34:22 41:6 45:2,8 47:2,25 50:23 51:8 53:22 56:8 65:23 67:25 69:22 70:11 71:20 72:20 75:8,13 75:21 77:12 84:21 95:9 96:22 97:8 103:20 107:12 107:15 110:3 121:17,17 122:20 125:10 128:10,18 129:14 136:13 139:22 148:15 149:6 154:2,12 think 10:16 11:19 13:22 14:3 17:6,6,9,13	18:22 19:5,10 19:24 21:17 24:1,15,21 25:11,19 26:6 26:9,24 27:1,6 27:11,13,17,21 29:18,25 30:14,16 32:3 33:3 34:10,18 35:5 36:11 37:7,10 38:6 39:7 40:16,22 43:4 47:20 48:8 49:5 50:13,21,24 51:4,10 52:4 52:10,15,19 54:5 56:23 57:3,10,19 58:6 61:8,11,13 61:16,19 62:14 63:7,9,16,16,17 63:24 64:3,12 65:1 66:20,21 66:22 68:16 68:21,23 69:1 69:19,23,25 70:11,20 71:14 71:20 72:15 73:5 74:16 75:1,7,24 76:14 77:1 80:7 81:15,25 83:12 84:19 85:22 86:7,8 86:21,23 87:2 87:15,17,19,21 88:6,8 89:19 91:14,22,24 93:2,9 94:2,3 95:12 97:15,18 98:7,17,19 99:20,24 103:23 104:15 105:21,23 107:4,8,18 109:16 113:20	113:25 116:2 116:10,20,25 117:4,5 118:1,3 118:24 119:9,13 120:12,17 121:2 121:6,24 123:2 125:5,6 128:7 128:20 129:5 129:21,22 130:11 131:4 134:6 135:13 136:7,22 137:3 137:13 140:22 140:25 142:14 143:19 145:15 145:21 146:7 146:24 147:11 147:13,13 148:1 151:3 152:21 154:20 156:5 156:6,7 157:21 159:8 thinking 95:20 95:22,24 96:7 143:3 148:21 thinks 119:25 121:14 third 8:21 137:12 137:13 139:1 thought 44:17 71:16 73:23,23 73:24,25 74:3 79:2 92:12 93:5 120:4 135:9 153:22 thoughts 24:20 threads 86:9 threat 84:17 threatened 84:17 three 11:20 14:1 23:1 38:5,25 64:10 65:20 65:25 71:7 74:16,18 79:19 82:12 90:11 102:13 104:1
--	---	---	--	--

118:24 128:20	64:9,23 66:7	23:25 45:14	53:15,16,16	52:5 65:7
130:15,19	66:18,22,23	52:16 55:8	58:17,17 64:7	90:16 94:19
139:9,10,13	68:6,7,12,24	66:5 117:5	65:4,6,14,21	94:20 95:4,8
144:11	69:24 72:5	120:18 124:12	65:22 66:2,4	100:6 107:7,21
throw 11:11	78:4 79:11	135:23 156:3	66:6,15,18	107:23,24
45:20	84:5,5,11	156:4,12	106:10 129:9	108:1,2 120:6
throwing 150:11	86:24 89:8	tired 43:12	140:14,18,19	126:4 132:25
time 5:2 6:13	91:16,18 93:4	69:14,14	transcribe 7:3	136:8 137:10,11
11:1,10,11,14	93:6,7,8,24	today 7:17 17:19	transcribed 6:3	137:15,21 138:1
12:3,10,15,18	94:4,24 97:13	22:8 30:25	transcribing	138:2,24
17:5 18:9,18	100:8 104:4	75:15 78:15	6:21	148:18,19,23
19:15 21:4	104:24 106:7	85:7 115:5	transcript 6:22	148:24
22:10 23:2,2	106:8,11,14	117:17 118:13,13	6:25	trials 46:21
23:4,7 24:4,6	107:15,18,19	119:17 125:22	transfer 104:3	132:13,22
24:8,15,23	108:1 109:16	134:3 154:6	107:15	137:16
26:5,10 27:1,4	109:19,22	today's 5:2 8:4	transferred	tried 31:4 52:1
27:7,16,21	112:24 113:12	told 8:3 69:14	108:7	59:13 66:5
28:20 29:22	113:15,16,24	70:23 71:5	transitioned	75:24 129:13
29:25 30:1,14	114:3,12 115:9	74:10 87:16	106:15	132:14,14,16
30:15,19 31:2	115:16 116:6,10	89:10 119:16	translator	132:23
31:5,7,14	116:22 118:5	158:13	54:22,25	trouble 11:24
32:12 34:3,17	120:4,14 122:7	Tom 118:19,22	55:6,10	Troy 89:9 90:6
35:3,4,9,10,15	123:9,16	tomorrow 63:14	translators	90:8
35:16,24 36:11	125:16 126:7	63:15	55:13	true 41:18 71:6
36:12 37:4,25	126:20 127:3	tons 93:24	transportation	71:17 121:12
38:1,8,11,16	131:22 133:10	top 79:10 118:3	45:3	truly 134:25
39:1,3,8,9,13	139:20 140:3	topic 152:19	travel 38:16	trust 23:22,23
39:20 40:3,11	140:5,7,9,15	toss 148:16	39:3,13,19	23:23 107:10
40:20,23 41:1	140:16,20,21	totally 131:15	traveling 38:17	trusting 25:18
41:12 42:6,18	140:23 142:17	touch 110:1	treat 20:4 44:13	truthful 133:17
43:8,20 44:18	143:4,5,6,6	toxicology 29:6	59:22	133:19
45:13,16 46:11	145:21 146:18	track 35:3,5	treating 80:25	try 19:5 21:19
46:16,22	146:20 147:10	72:10 140:15	treatment 56:13	22:20 23:10
47:16,17,20,21	148:7,14	155:16,18,19	126:15 153:15	24:13 41:19
48:3,13 49:5	150:15,18	tracking 140:2	trends 130:3	52:3 59:23
49:12,15 50:6	151:4 154:10	140:5,7,15	triage 120:18,22	65:8 66:10
50:11 51:3,4,6	155:16,18,19,19	traditionally	trial 30:5,12,21	68:8 75:24
51:12 52:3,8	155:20,21	14:19 106:17	30:23 31:18	77:1 91:1 92:10
52:12,19,21	156:14 157:10	traffic 40:18	35:23 37:6	92:15 96:8
53:5 54:13,20	157:10,12	train 44:17	38:5 41:4,21	98:9 100:24
54:23,24	timeframe 36:2	66:24 69:4	41:23 43:1,3,5	123:18 129:11
55:2,12,19	130:13	92:11 105:18	43:14,15,16,20	130:1 137:12
56:4,5 57:5,8	timekeeper	121:22 128:15	44:3 45:15	144:6 150:24
57:9,12,13	141:16	144:21	46:23 47:3,13	153:19 154:12
59:24 60:7,8	timekeeping	trained 68:9	47:22 48:1,2,2	157:11
60:13 61:8,11	140:1 155:15	training 11:11	48:4,10,11,13	trying 20:14
63:21,22,23	times 8:6 19:1,13	12:13,17 53:13	48:14 51:23	35:3,19 36:25

48:7 68:5 75:6 98:8 117:6 130:21 153:24 Tuesday 148:24 148:25 tumultuous 145:15 turn 49:19 72:20 89:18 111:10 149:3 157:24 turned 148:14 Turning 133:1 140:1 141:1 144:2,24 147:3 turnover 68:16 68:19,21 69:3 106:4,5,11 128:7 turns 71:16 136:1 twenty 128:2 twice 55:18 116:4 two 9:4 11:25 12:7 13:3,6,25 14:5,6 18:7 25:3 30:10 38:1,25 40:2 42:21,22 58:24 65:17 65:25 72:1 79:18 82:12 85:22 89:4 90:3,24 96:17 96:22 99:20 100:12 101:21 101:25 108:13 109:4 124:3 129:16 130:14 130:17 131:4 133:8,9 139:13 144:10 145:17 147:3 148:17 149:10,18,19 149:24 151:24 two-and-a-	138:10 two-and-a-half 13:14 two-hour 90:9 two-prong 132:15 two-step 33:21 type 58:7 65:23 150:2 types 15:17 80:8 134:2 136:5 156:15 157:15 157:17 typewriting 6:3 161:7 typical 16:25 65:21 68:12,15 typically 16:2 17:5 18:7 24:11 24:23 29:19 34:1 38:25 40:9 41:3,5 46:4 49:20 58:6,7 106:18 126:17 133:6 139:2 <hr/> U U.S 5:5 53:23 54:1,2,3 ultimate 143:9 ultimately 43:16 75:17 143:16 unable 47:25 73:3 104:17 109:11 148:6 154:15 unclassified 45:24 48:20 108:14 unclear 11:20 uncommon 35:17 125:11 undergrad 123:20,23 undergraduate 141:19	underlying 141:13 understand 7:7 18:24 23:14,15 23:16 32:4,13 33:10 46:6 60:11 87:17 103:17,19 115:13,25 131:8 134:21 135:7 135:23 136:11 143:11,25 understanding 38:9 62:19,21 64:5 72:23,25 73:14 75:9 76:3 87:9 92:6 94:9 99:10 105:16 105:20 107:10 111:17,20 113:5 119:3 126:25 127:14 141:22 141:25 144:11 144:24 147:20 149:9 157:4 understands 76:5 understood 142:11 148:4 155:10,13 unethical 74:9 74:10 unethically 74:7 unfortunate 33:3 unfortunately 119:22 unique 150:20 United 1:1 3:1,18 53:24 universally 70:25 unlimited 56:4 unpack 43:25 64:18 unturned 93:20	updating 86:14 upper 135:17 145:11,14 146:3 147:22 154:4 157:25 158:1 158:12 upset 119:10 uptake 130:24 upwards 159:23 urban 34:25 usage 131:1 use 21:23 22:8 25:24 33:11 34:6,14 35:11 36:13 52:2 53:25 57:1,6,8 57:21 99:4 104:13 128:19 128:20,24 129:4 150:4 useful 30:20 142:10 useless 139:11 user 129:1,1 usual 127:24 usually 21:1 35:20 36:1 39:1,11 46:2 60:14,14 66:8 67:23 114:19 129:15 137:24 139:20 utilities 124:16 utilize 147:7 utilizing 36:6 <hr/> V v 73:24 vacation 64:10 vague 36:16 47:24 vaguely 30:3 value 68:11 varies 11:3 25:2 38:18 45:22 46:3 133:3 150:2	various 41:5 128:16,19 131:10 136:16 142:8 147:21 148:6 151:15,16 veiled 84:17 venue 19:15,18 20:15 verbal 6:23 verbatim 75:8 verification 133:14,20 134:9 verify 133:14 versus 5:4 40:17 68:7 127:4 vertical 107:5 victim 36:20,24 41:23,24 42:1 42:3,4 45:11 134:15 video 5:3 6:21 139:21 videographer 4:23 5:1,11,22 6:9 49:11,14 109:18,21 160:20 videotaped 1:16 3:12 160:21 view 29:4,5 75:19,20,21 viewed 75:14 viewing 75:4 views 71:19 vindictive 20:12 violate 113:25 violated 115:8 116:19 violates 126:21 violating 47:19 81:16 87:1 116:17 violation 80:11 112:10 114:5,7 114:9 154:7
---	---	--	---	--

violations 112:1 116:15 118:5 157:20 violence 39:11 39:12 virtues 45:10 visit 24:12,13,25 25:21 38:20 visits 13:11 22:22 55:2 voice 25:11 voir 47:18 voluminous 10:17 vs 1:6 3:6	131:24 waitlisting 16:4 27:10 72:17 74:23 78:2 145:23 154:2 waive 19:8,10,11 19:14,20 29:24 waiver 19:21 wake 154:22 wake-up 154:21 Wal-Mart 136:8 walk 67:4 walking 67:9 wall 25:5,7,15 want 6:24 9:8 16:21 23:11,12 23:12,13,13,25 24:15,21 29:24 34:8 42:11 43:13,25 45:1,8,9 47:3 47:6,15 50:1 59:7 70:2,12 71:21 76:18,20 76:21 79:24 93:14,20 95:25,25 96:1 96:3,21 97:14 97:14 98:21 110:3 112:17,21 115:22,23 116:1 122:15 131:13 135:22 137:21 141:1 146:13,24 150:24 152:7 152:11 159:11,11 160:8,18 wanted 15:18 17:9 92:21,24 93:2 94:16 110:1 115:1,2 wanting 25:18 70:16 wants 47:13,15 93:1 114:8 116:21 160:6	Washington 73:24 wasn't 48:14 53:1 74:2 89:1 125:10 155:18 waste 106:12 wasted 40:4 wasting 69:18 154:10 Waters 111:22 way 11:19 12:9 20:4,9 22:15 27:25 40:2 41:25 52:10 56:7 58:6 70:23 72:11 76:7 78:21 84:10,11 90:12 93:7,17 103:24 116:16 131:9 143:12 152:8 155:13 Wayne 129:22 ways 26:22 57:22 98:8 129:8 130:1 146:7 159:6 we'll 16:22 37:6 76:3 85:17,17 we're 36:25 59:3 76:3 78:6 115:11 118:4 121:19 weaknesses 45:6 84:2 wears 69:18,19 69:24 Wednesday 102:19 152:15 week 24:18 35:22 39:25 40:3 48:14,22 69:13 95:3 102:19 122:5,5 159:23 week-long 65:7 65:8	weeks 23:1 64:8,10,14,17 65:17,25 71:7 weigh 160:2 welcome 49:18 85:7 109:25 went 10:2 61:15 103:7 118:4 125:10 152:10 weren't 33:1,2,2 118:1 160:11 West 4:4,9,15 Western 1:1 3:1 3:18 5:6 whisper 26:2 WiFi 139:9,10,11 139:12,13,15,16 139:19 Williams 129:22 window 19:17 20:11 25:5,7 133:4 withdraw 90:1 104:9,17,20 134:17 witness 2:2 5:23 6:4 22:6 30:6,12 31:1 33:8,12 107:14 135:25 136:1,2 138:4 161:5 witnesses 13:5 13:6 22:4 23:18 29:7,8 30:6,11 42:13 45:9 47:10,11 50:17 136:4 Woodrail 4:14 woods 117:19 160:10 word 82:22 102:6 words 96:24 129:2 work 6:19 10:3 11:10 24:2 34:18 35:11	38:11 44:8 50:15 55:9 64:15,17 65:24 67:24 72:3 78:20 93:17 95:23 96:14 104:24 129:19,24 139:6 151:16 159:23 160:18 workbook 129:21,21 154:23,25 155:4 worked 9:12,20 26:12 78:21 101:21 123:1 140:12 160:5 workers 55:16 working 64:7 68:12 69:16 160:1 workload 14:25 38:9 77:25 78:13 124:5 146:4 154:13 157:4 works 58:6 Workshop 65:9 worse 58:4 68:17,18 121:7 121:18,20,25 127:19,21,22 128:1,10 146:1 worst 121:14 wouldn't 18:8 25:23 37:23 56:5 84:1 90:23 91:20 93:14 122:14 125:14 142:10 159:3 writ 80:13 100:19,24,25 101:4,5,8,8 146:17,18 147:7 147:18 151:17
W				
wait 7:1 28:4 88:20 waiting 25:12 27:20 28:3 42:23 82:6 118:8 139:5,5 waitlist 16:16 17:8,15,18 32:19 77:23 78:14,16,21,25 79:6,7,12,14 80:10,18,19,22 81:22 82:11,12 82:14,17,19 83:1,3,6 84:2 84:3,7,8,22 85:5 86:2,15 86:20,25 87:18 88:21 89:3 91:2,4 98:1 99:1,4,15 99:19 100:1 102:11,21 103:2,7 127:12 127:18,23 144:24 145:6 148:12 152:5,9 153:22 154:8 154:11 waitlisted				

152:2 write 133:24 writs 147:12 written 103:18 wrong 32:1 91:14 96:9 103:24 wrote 145:11	130:16,19 131:20 138:10 150:13 156:2 yesterday 30:5 48:2,13 69:14 94:16 114:24 119:7 York 4:5 124:11 young 36:21 52:4 59:7 105:18 160:13 younger 11:12 32:13 36:24 53:3 57:9 117:12 129:6	110 2:9,9 12 64:12 120 126:6,7,19 126:22 127:9 152:22 153:13 120-days 126:15 123 2:3 13 109:5 130 22:23 80:19 80:21 133 16:9 14 12:21 63:10 63:10 64:19,21 125:5 15 12:12 13:20 24:7 45:16 131:19 132:19 150:13 15.00 159:25 150 16:2 27:11 61:7,8 131:22 150-miles 90:9 152 2:3 153 2:4 155 2:10 157 2:8 16 36:21 17 36:21,21 64:24 91:15 17-04057-CV-... 1:6 3:6 5:5 17th 62:15 18 65:1	124:2,23 2013 125:5 2016 62:9 2017 1:18 3:13 5:2 62:10,10 215 111:23 116:11 221 4:9 24 129:22 2422 3:16 5:9 24th 129:22 25 8:10,14,15,20 8:25 28:20 28:24 62:11,17 25,000 45:24 25,000.00 46:5 2511 4:21 252.2 62:18,24 63:25 25th 67:15 100:13 102:4 112:11 152:14 26th 152:6 29 79:16	66:21 80:18 400 92:9 42nd 84:21 98:3 99:8 100:2,13 102:3 102:4 112:11 152:12 43 89:19 44 89:5 45 89:5 45,000.00 70:5
X x 2:1,6 75:15 137:8	Z Zell 96:24 97:2 zero 79:14 133:23 zeros 133:23	0 063 152:10	3 3 109:22 3,700 17:6 30 11:5 39:8 48:21 62:9 67:7 76:17 80:18 81:14,20 81:21 125:11 155:23 30-minute 39:20 30,000.00 93:12 39,000.00 70:4 159:21,22 39446 86:10	5 5 100:15 147:3,6 147:23 5:53 160:21,23 50 12:14,17 38:19 61:22 64:7,8,14 66:21 81:21 82:9 141:2 150:5,7,9,11 50-miles 90:11 50/50 26:4 500,000 46:2 500,000.00 46:8 500.00 15:19 136:10,23 51 4:4 52nd 4:4 54 2:7 103:9 104:5 147:4,13 55 2:7 53:9 78:7 85:23 559 126:8,11 129:3,3 559.115 126:6 126:14 56 2:8 85:18 57 2:8 157:24 158:4 573-449-0561 4:22 573-526-5212 4:16 573-751-9167
Y y 75:16 yeah 11:24 63:15 64:7 88:17 124:24 127:20 130:19 137:9 139:19 141:11 149:2,17 year 8:21 13:19 14:3,8 17:6,7 17:13,14 38:13 48:24 49:2,2 58:2 59:16 62:10 63:11 64:8,9,24 66:12,15 67:23 70:4,5 92:5 94:4 100:6 107:24 108:11 111:21 122:4 124:3 130:14 132:13 132:16,23 136:19 140:8 141:3 159:22 year's 17:5 years 9:4,8 13:20,21,22 13:25 14:2,3 38:25 48:21 65:20 74:16 74:18 118:24 125:8,9,20,21 128:2 130:15	1 146:1 49:12 79:17 1,000 15:24 16:24 17:16,17 1,200 17:20 1:30 3:14 1:36 5:2 10 11:3,16 12:12 24:7 10,000.00 92:23 93:13 100 4:15 16:2 27:11 29:13 54:18 72:19 146:2,6 149:2 100,000.00 45:25 134:12 1000 4:15 10019 4:5 103 2:7 11 64:12,24	2 2 49:15 109:19 2:41 49:12 2:49 49:15 20 1:18 3:13 5:2 39:8 125:11 132:18,19 200 17:13,14,15 71:15 72:19 79:11 80:16 84:7,7 92:6 127:8 2008 9:17 124:1	4 4-1.16 91:15 4:25 109:19 4:34 109:22 40 11:6 12:17	

4:10				
58 2:9 97:22				
111:11				
59 2:9 110:4,14				
<hr/>				
6				
<hr/>				
6 2:2				
6:00 3:14				
60 2:10 12:14				
66:21 155:1				
159:23				
600.062 80:11				
87:1 103:3				
152:3				
600.063 80:11				
80:15 81:18				
87:1 98:18				
101:11,14,15,16				
101:22 102:21				
102:23 103:10				
103:11,13				
151:25 152:5,8				
65084 3:17				
65101 4:10				
65201 4:21				
65203 4:16				
65804 5:10				
<hr/>				
7				
<hr/>				
7 4:15				
70 12:15 66:21				
75 27:12 149:14				
149:18,19,22				
<hr/>				
8				
<hr/>				
85 2:7,8				